

**CITY OF NEW YORK  
FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 1)**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (Parks) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement (Agreement) with the Prospect Park Alliance, Inc. (Licensee) for the operation of various food concessions, special events, short-term facility agreements, and catering services at Prospect Park, Brooklyn. These concessions are to include a snack bar at the Parade Ground; seasonal food truck events in Prospect Park; mobile food units throughout the year throughout Prospect Park; short-term facility agreements for recreational, educational, cultural and other similar parks-appropriate programs and services and catering services at the Audubon Center at the Boathouse and the Picnic House; and other such uses as may be approved in advance in writing by Parks. Additionally, as set forth in the Agreement, Licensee shall collect special event concession fees generated by Third Party Events. In lieu of a license fee, Licensee shall use all collected concession fees to offset Licensee's costs of providing management, maintenance, operation and programming services under the Agreement. The term of this Agreement shall commence upon Parks' giving written Notice to Proceed to Licensee and, unless terminated sooner in accordance with this Agreement, shall terminate ten (10) years from the date of execution of a new Maintenance and Operations Agreement (M&O Agreement) to be entered into with Licensee, or the last day of any subsequent renewal periods that are exercised pursuant to this Agreement. Parks, in its sole discretion, shall have the option to renew this Agreement for up to two (2) additional five (5)-year periods, provided that Parks has renewed the M&O Agreement for the same periods. Notwithstanding the foregoing, in no event will the total length of the term of this Agreement, including any renewal periods, exceed the shorter of **(i)** twenty (20) years; or **(ii)** the term of the M&O Agreement, including any renewal periods.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

February 8, 2017

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: Director of the Mayor's Office of Contract Services



**NOTIFICATION REQUIREMENTS**

**Subject concession was awarded by CSB or CSP.**

YES  NO

**If YES**, check the applicable box(es) below:

- The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by \_\_/\_\_/\_\_, which was at least 30 days prior to its issuance.
- The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.
- The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by \_\_/\_\_/\_\_, which was at least 40 days prior to issuance of the solicitation.

**If NO**, check the applicable box below:

- The Agency certifies that each affected CB/BP received written notice by 05/01/2015, which was at least 40 days in advance of the FCRC meeting on 06/10/2015 at which the agency sought and received approval to use a different selection procedure.
- The Agency certifies that each affected CB/BP received written notice on \_\_/\_\_/\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_/\_\_/\_\_.
- The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_/\_\_/\_\_.

**Law Department approved concession agreement on \_\_/\_\_/\_\_**

**Award is a major concession.**

YES  NO

**If YES**, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

- CPC approved on \_\_/\_\_/\_\_
- City Council approved on \_\_/\_\_/\_\_ or  N/A

**AUTHORIZED AGENCY STAFF**

**This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.**

**If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:**

- The concession was approved by the FCRC on \_\_/\_\_/\_\_.
- The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name Alexander Han

Title Director of Concessions

Signature \_\_\_\_\_

Date \_\_/\_\_/\_\_

**CERTIFICATE OF PROCEDURAL REQUISITES**

**This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.**

Signature \_\_\_\_\_

Date \_\_/\_\_/\_\_

**City Chief Procurement Officer**

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:**  
**CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

The New York City Department of Parks and Recreation (Parks) intends to seek Franchise and Concession Review Committee (FCRC) approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement (Agreement) with the Prospect Park Alliance, Inc. (Licensee) for the operation of various food concessions, special events, short-term facility agreements, and catering services at Prospect Park, Brooklyn.

These concessions are to include a snack bar at the Parade Ground; seasonal food truck events in Prospect Park; mobile food units throughout the year throughout Prospect Park; short-term facility agreements for recreational, educational, cultural and other similar parks-appropriate programs and services and catering services at the Audubon Center at the Boathouse and the Picnic House; and other such uses as may be approved in advance in writing by Parks. Additionally, as set forth in the Agreement, Licensee shall collect special event concession fees generated by Third Party Events under Section 2-10 of Parks' Rules and Regulations.

***Instructions:** Provide all information requested below; check all applicable boxes.*

**A. SELECTION PROCEDURE**

Sole Source

Other *Describe:*

**B. NEGOTIATIONS**

***Instructions:** Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.*

The term of this Agreement shall commence upon Parks' giving written Notice to Proceed to Licensee and, unless terminated sooner in accordance with this Agreement, shall terminate ten (10) years from the date of execution of a new Maintenance & Operations Agreement ("New M&O Agreement") to be entered into with Licensee, or the last day of any subsequent renewal periods that are exercised pursuant to this Agreement. Parks, in its sole discretion, shall have the option to renew this Agreement for up to two (2) additional five (5)-year periods, provided that Parks has renewed the New M&O Agreement for the same periods. In no event will the total length of the term, including any renewal periods, exceed the shorter of (i) twenty (20) years; or (ii) the term of the M&O Agreement, including any renewal periods.

In lieu of a license fee, Licensee shall use all collected concession fees to offset Licensee's costs of providing management, maintenance, operation and programming services under the Agreement.

**C. BASIS FOR AWARD** (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

**The agency determined that award of the concession is in the best interest of the City because:**

The Prospect Park Alliance, Inc. (PPA) was formed in 1987 to restore Prospect Park after years of budget cuts resulted in a deterioration of its natural areas and a decline in usage. PPA was established to partner with Parks

in order to preserve and maintain Prospect Park for the enjoyment of millions of visitors each year by caring for the natural environment, preserving the historic design and serving the public through various facilities and programs.

In July 2010, Parks and PPA entered into an agreement for the management, maintenance and operation of Prospect Park ("Current M&O Agreement"). The Current M&O Agreement is for one (1) five (5)-year term, with three (3) five (5)-year renewal options, under which PPA is required to use all of its revenues, income, donations and other sources of funding to cover PPA's management, maintenance, operation and programming expenses, and the investment necessary to improve Prospect Park. Parks and PPA are now negotiating a New M&O Agreement that would replace the Current M&O Agreement. This New M&O Agreement is anticipated to have one (1) ten (10)-year term with two (2) five (5)-year renewal options, exercisable at Parks' discretion, with a total length of the term not exceeding twenty (20) years. The term of the Sole Source Concession Agreement will not exceed the shorter of **(i)** twenty (20) years; or **(ii)** the term of the New M&O Agreement, including any renewal periods.

PPA raises more than \$4 million annually and has helped secure more than \$150 million in public and private funds for Prospect Park's restoration. PPA currently holds licenses to operate several concessions in the Park, including the Carousel, the Tennis Center, the LeFrak Center at Lakeside, and snack bars at the Picnic House and Audubon Center at the Boathouse. PPA's management has improved service to the public and increased attendance at these concessions and in the Park as a whole (visitation has increased from 1.5 million annually in the early 1980's to more than 10 million today). PPA also manages a wide variety of recreational and educational programs for the public in the Park. After nearly 30 years in operation, PPA knows the public who visit the Park, understands how each element within the Park fits together and promotes the whole Park experience as well as offering specific activities and programs.

PPA funds many programs vital to Prospect Park's success including crews devoted to the park's natural resources, arboriculture, horticulture, turf and ballfields, and woodlands. PPA funds groundskeepers, a fix-it crew, a summer weekend clean-up crew, and administrative support positions. They fund educational programs at the Audubon Center at the Boathouse, Pop-Up Audubon and the Lefferts Historic House. They provide community outreach through the Park's Community Committee and issue-specific taskforces. They provide public information through wayfinding and signage, park maps, a website, eNews and an events calendar. PPA also organizes the Prospect Park Volunteer Corps which engages community members, students and businesses in the care and maintenance of Prospect Park.

Parks believes that it is in the City's best interest to approve an Agreement with PPA to provide for park-wide food service including: operating and maintaining a snack bar at the Parade Ground, coordinating and overseeing catering services at the Picnic House and the Audubon Center at the Boathouse, permitting seasonal food truck events and providing for food trucks and/or carts at locations throughout the park throughout the year. Parks also believes it is in the City's best interest to negotiate an Agreement with PPA for them to operate short-term facility agreements at the Picnic House and the Audubon Center at the Boathouse, and to collect special event concession fees generated by Third Party Events for events held throughout the Park.

PPA has historically provided substantial maintenance at the 40-acre Parade Ground, which offers ballfields and sports courts, the Stewart Playground, the Prospect Park Tennis Center, and three comfort stations. PPA's involvement in maintaining and improving the Parade Ground makes it uniquely qualified to manage a snack bar at this site, providing refreshments to the many park patrons who use the Parade Ground's facilities.

As PPA handles the scheduling of events at the Picnic House, which can range from concerts, to weddings, to Parks appropriate community programs, PPA is uniquely positioned to also oversee its catering services and site rentals. The Picnic House, jointly maintained by PPA and Parks, is a brick- and glass-enclosed pavilion with a terra cotta tile roof and occupies a site favored by park visitors for more than a century.

Prospect Park's Boathouse reopened in 2002 after years of much-needed restoration, and was named the Audubon Center at the Boathouse, with programming provided by PPA. PPA's management of the day-to-day operations allows for the seamless integration of both public and private uses of the facility and PPA's

understanding of how the facility can best serve the community makes it uniquely qualified to coordinate and oversee catering services and site rentals.

In recent years, PPA and the New York City Food Truck Association have hosted food truck "rallies" at the Grand Plaza Army entrance to Prospect Park, as well as at the Parade Ground and at other events in the park. These seasonal weekend events capitalize on the recent food truck popularity that has captivated the City while providing healthy and diverse food options at locations in the park that are convenient to visitors. PPA proposes to host future festivals while also expanding the presence of food trucks and/or other mobile vending options throughout the park as part of a comprehensive approach toward park-wide food service.

Prospect Park is also host to hundreds of special events throughout the year including walk-a-thons, running and bike races, concerts and other festivals, and more. Such events, operated or sponsored by third parties, generate special event concession fees for the use of this public space. It is anticipated that the Agreement with PPA will allow PPA to collect special event concession fees generated by Third Party Events, the proceeds of which will be used to offset a portion of PPA's costs contemplated under such agreement, including the management, maintenance, operation and programming of Prospect Park.

PPA plays a very significant role in funding the operating budget that keeps the park clean, safe and beautiful, and employs a significant staff that takes care of the park and engages its diverse surrounding communities. Today, Prospect Park is an international model for urban parks, and one of the premier green spaces in the United States. Given that PPA has a specific, proven commitment toward the management, maintenance, operation, and programming of Prospect Park, Parks believes that it is in the best interest of the City to approve this Sole Source License Agreement.

**D. PUBLIC HEARING       N/A – Subject award NOT a significant concession]**

**1. Publication & Distribution of Public Hearing Notice**

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on \_\_\_/\_\_\_/\_\_\_, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on \_\_\_/\_\_\_/\_\_\_, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by \_\_\_/\_\_\_/\_\_\_.

\_\_\_\_\_, a NYC citywide newspaper on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_  
 \_\_\_\_\_, a NYC citywide newspaper on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_

**OR**

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 01/20/2017, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 01/20/2017, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement in the newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 01/20/2017.

New York Post, a NYC citywide newspaper on 01/26/2017 and 02/02/2017.

Brooklyn Courier Life, a NYC local newspaper published in the affected borough(s) on 01/27/2017 and 02/03/2017.

## 2. Public Hearing Date, Exception to Public Hearing Requirement

A Public Hearing was conducted on 02/06/2017.

***OR***

The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on \_\_\_/\_\_\_/\_\_\_ and sent a copy of that notice to all Committee Members.



## MEMORANDUM

**TO:** Hon. Eric Adams, President of the Borough of Brooklyn  
Craig Hammerman, District Manager, Brooklyn Community Board #6  
Jeremy Laufer, District Manager, Brooklyn Community Board #7  
Michelle George, District Manager, Brooklyn Community Board #8  
Warren Berke, Chair of Parks Committee, Brooklyn Community Board #9  
Shawn Campbell, District Manager, Brooklyn Community Board #14

**FROM:** Philip Abramson, NYC Parks Director of Revenue Communications *PA*

**SUBJECT:** Notice of Joint Public Hearing, February 6, 2017: Intent to award as a concession the operation of various food concessions, special events, short-term facility agreements, and catering services at Prospect Park, Brooklyn

**DATE:** January 20, 2017

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks and Recreation to be held on Monday, February 6, 2017 at 2 Lafayette Street, 14<sup>th</sup> Floor Auditorium, Borough of Manhattan, commencing at 2:30 p.m. relative to:

INTENT TO AWARD as a concession the operation of various food concessions, special events, short-term facility agreements, and catering services at Prospect Park, Brooklyn, for a potential twenty (20) year term to the Prospect Park Alliance, Inc. ("Licensee"). These concessions are to include a snack bar at the Parade Ground; seasonal food truck events in Prospect Park; mobile food units throughout the year throughout Prospect Park; short-term facility agreements for recreational, educational, cultural and other similar parks-appropriate programs and services and catering services at the Audubon Center at the Boathouse and the Picnic House; and other such uses as may be approved in advance in writing by Parks. Additionally, as set forth in the License Agreement, Licensee shall collect special event concession fees from third parties under Section 2-10 of Parks' Rules and Regulations. In lieu of a license fee, Licensee shall use all collected concession fees to offset Licensee's costs of providing management, maintenance, operation and programming services under the License Agreement.

**LOCATION:** A draft copy of the license agreement may be reviewed or obtained at no cost, commencing on Friday, January 27, 2017 through Monday, February 6, 2017, between the hours of 9:00 a.m. and 5:00 p.m., excluding weekends and holidays at the NYC Department of Parks and Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

Individuals requesting Sign Language Interpreters should contact the Mayor's Office of Contract Services, Public Hearings Unit, 253 Broadway, 9<sup>th</sup> Floor, New York, NY 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING.

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115

**DRAFT**

LICENSE AGREEMENT

BETWEEN

**PROSPECT PARK ALLIANCE, INC.**

AND

**CITY OF NEW YORK  
DEPARTMENT OF  
PARKS & RECREATION**

*for*

**THE OPERATION OF VARIOUS FOOD CONCESSIONS, SPECIAL EVENTS, SHORT-  
TERM FACILITY AGREEMENTS AND CATERING SERVICES  
AT  
PROSPECT PARK,**

BROOKLYN

**B73-O**

DATED: \_\_\_\_\_, 2017

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LICENSE AGREEMENT ("License" or "License Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, between the City of New York (the "City") acting by and through the Department of Parks & Recreation ("Parks"), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10065 (Fax No. 212-360-3434), and Prospect Park Alliance, Inc. ("Licensee"), a not-for-profit organization with an address at 95 Prospect Park West, Brooklyn, New York 11215 (Fax No. 718-965-6950).

**WHEREAS**, Parks, pursuant to Section 533 of the City Charter, has jurisdiction over parklands of the City of New York and facilities therein; and

**WHEREAS**, Prospect Park in the Borough of Brooklyn is property under the jurisdiction and control of Parks; and

**WHEREAS**, the Licensee has been formed expressly for the purpose of promoting and assisting "in the restoration, maintenance, and management of Prospect Park" and has entered into a License Agreement with Parks of even date herewith with respect to Licensee's maintenance and management responsibilities in Prospect Park (the "M&O Agreement"); and

**WHEREAS**, the Licensee has for many years operated various food concessions, special events, short-term facility agreements and catering services in Prospect Park;

**WHEREAS**, the Commissioner seeks to provide for the operation of various food concessions, special events, short-term facility agreements and catering services in Prospect Park for the accommodation, enjoyment, and convenience of the public; and

**WHEREAS**, Licensee seeks to operate various food concessions, special events, short-term facility agreements and catering services in Prospect Park for the benefit of the public at Prospect Park, in accordance with the terms set forth herein; and

**WHEREAS**, Parks and Licensee, upon approval from the Franchise and Concession Review Committee ("FCRC"), seek to enter into this sole source License Agreement specifying rights and obligations with respect to the operation of various food concessions, special events, short-term facility agreements and catering services in Prospect Park.

**NOW THEREFORE**, in consideration of the promises and covenants contained herein, the parties do hereby agree as follows:

## **I. GRANT OF LICENSE**

**1.1** (a) (1) Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to operate the following concessions in accordance with the provisions herein and to the reasonable satisfaction of the Commissioner of Parks ("Commissioner"):

- (i) Snack bar at the Parade Ground;

(ii) Seasonal food truck events in Prospect Park on such dates and at such location(s) as shall be reasonably approved in advance in writing by Parks;

(iii) Food trucks and/or carts (“Mobile Food Units”) throughout the year throughout Prospect Park at such locations as shall be reasonably approved in advance in writing by Parks. The design and dimensions of the Mobile Food Units is subject to Parks' reasonable prior written approval;

(iv) Short-term facility agreements for recreational, educational, cultural, and other similar parks-appropriate programs and services and catering services at the Audubon Center at the Boathouse and the Picnic House in Prospect Park. Licensee will notify Parks of scheduled private short-term facility agreements for the Boathouse and the Picnic House on a quarterly basis by providing a list of new reservations for such agreements which will include location, date reserved, name of customer and date of use of the facility. Licensee will promptly advise Parks of any changes to such reservations in the following quarter's report; and

(v) Other such uses as may be approved in advance in writing by Parks.

(2) Parks also hereby grants to Licensee the right to receive the fees generated by Third Party Events (as hereinafter defined), and Licensee agrees to work with Parks to review and negotiate Third Party Event proposals and permit applications, coordinate Third Party Events with other activities in Prospect Park and provide on-site supervision of the production and logistics associated with Third Party Events ensuring compliance with the terms of event permits.

(3) All plans, schedules, services, menu items, merchandise, rates, fees and prices, and hours of operation are subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. Except as provided herein, Licensee will be responsible for all costs associated with the operation and maintenance of the Licensed Premises (as hereinafter defined).

(4) There are presently no permits issued by Parks to concessionaires other than Licensee to operate Mobile Food Units in Prospect Park.

(b) Licensee may, subject to the prior written approval of Parks, enter into sublicense agreements (“Sublicense Agreements”) with third parties (“Sublicensees”) with respect to the activities set forth in Sections 1.1(a)(1)(i) and (iii) above in accordance with the terms and conditions set forth herein. The terms and conditions of any proposed Sublicense Agreement shall be subject to Parks' prior written approval, which approval shall not be unreasonably withheld or delayed. Two (2) copies of any proposed Sublicense Agreement shall be submitted to Parks with Licensee's written request for approval.

(i) Any Sublicense Agreement which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require said Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same.

(ii) Licensee shall require said Sublicensee(s) to comply with all provisions contained within this License, including, but not limited to, obtaining insurance required of the Licensee under this Agreement and indemnifying the City as set forth in Paragraphs 19 and 20 herein.

(iii) No Sublicense Agreement may be assigned without the prior written consent of Parks. Any subsequent Sublicense Agreement(s) will be subject to the terms and conditions as set forth in this License.

(c) In selecting a Sublicensee for Parks' approval, Licensee shall issue a solicitation in the basic form of a request for proposals ("RFP") with terms and conditions approved by Parks. The RFP shall be advertised in the City Record and other appropriate publication(s) approved by Parks. Parks shall require Licensee to conduct a background check of any proposed Sublicensee in accordance with Parks' usual procedures and requirements and subject to Parks' approval. Parks disapproval of any successful proposer shall be deemed reasonable if the successful proposer fails the background check.

(d) Licensee may designate required caterers for the activities set forth in Section 1.1(a)(1)(iv) above who will be subject to Parks' prior written approval, and be required to enter into sublicense agreements which will be awarded pursuant to competitive solicitation processes as approved by Parks. The sublicense agreements shall be subject to the same requirements as set forth in Section 1.1(b). Parks hereby approves the following sublicenses for caterers:

The Movable Feast, Audubon Center at the Boathouse, 3/1/08 – 12/31/17

Bartleby & Sage, Picnic House, 2/1/17 – 1/31/18

Bension Kohen, Picnic House, 2/1/17 – 1/31/18

Bon Soir Caterers, Picnic House, 2/1/17 – 1/31/18

The Movable Feast, Picnic House, 2/1/17 – 1/31/18

The Raging Skillet, Picnic House, 2/1/17 – 1/31/18

Simply Divine, Picnic House, 2/1/17 – 1/31/18

Steven Brown Caterers, Picnic House, 2/1/17 – 1/31/18

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders which are or may become necessary to operate at the Licensed Premises in accordance with the terms of this License. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein. Commissioner may deem as a default Licensee's failure to fulfill any of its obligations herein for any reason.

**1.3** It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by Parks, but that during the Term of this License, Licensee shall have the use of the Licensed Premises for the purposes herein provided. Licensee has the right to occupy and operate the Licensed Premises only so long as each and every term and condition in this License is strictly and properly complied with in all material respects (subject to

applicable notice and cure periods) and so long as this License is not terminated by Commissioner.

**1.4** Licensee shall provide, at all times, full and free access to the Licensed Premises to the Commissioner or his representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes and to ensure Parks' satisfaction with Licensee's compliance with the terms of this License Agreement.

**1.5** Licensee may use such name in its operations at the Licensed Premises as shall be approved in advance in writing by Parks. Parks may require that the City own the portion of any name selected by Licensee for use at the Licensed Premises that indicates Parks property or a preexisting facility name. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with Parks' property. The City is the owner of the designation and trademark "Prospect Park" and variations thereof, and all other designations and trademarks of Parks, including Parks signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations and identifications.

## **II. DEFINITIONS**

**2.1** As used throughout this License, the following terms shall have the meanings set forth below:

- (a)** "Alteration" shall mean (excepting ordinary repair and maintenance):
  - (i)** any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Licensed Premises; or
  - (ii)** any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of the Licensed Premises.
- (b)** Intentionally omitted.
- (c)** "City" shall mean the City of New York, its departments and political subdivisions.
- (d)** "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or his designee.
- (e)** "Comptroller" shall mean the Comptroller of the City of New York.
- (f)** Intentionally omitted.
- (g)** "Expendable Equipment" or "Personal Equipment" shall mean all equipment, other than Additional Fixed Equipment provided by Licensee.
- (h)** Intentionally omitted.

(i) "Fixed Equipment" shall mean any property affixed in any way to the Licensed Premises existing at the time Notice to Proceed is given, whose removal would damage the Licensed Premises.

(i) "Additional Fixed Equipment" shall mean Fixed Equipment affixed to the Licensed Premises subsequent to the date that Notice to Proceed is given.

(ii) "Fixed and Additional Fixed Equipment" shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.

(j) (i) "Gross Receipts" shall include, without limitation, all funds or receipts of any kind received by Licensee from or in connection with its operations at the Licensed Premises, without deduction or set-off of any kind, from the sale or provision of merchandise, food and beverages, or services of any kind, provided that Gross Receipts shall exclude the amount of any Federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee. Gross Receipts shall include any funds received for orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside or away from the Licensed Premises, and shall include all receipts of Licensee or orders taken at the Licensed Premises by Licensee for services to be rendered by Licensee in the future either at or outside of the Licensed Premises. For example, if Licensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered upon the Licensed Premises may be made other than at the Licensed Premises.

(ii) Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities. Gross Receipts shall also include Licensee's income from short-term facility agreements and sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee's subcontractors or sublicensees. Gross Receipts shall further include all fees received by Licensee in connection with Third Party Events.

(iii) Only Licensee's net receipts from vending machines shall be included in Gross Receipts.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (iv):

(a) With respect to non-catered food and beverages service, a "Gratuity" shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee's customer or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee receives and pays over in total to its employees (other than management) who are primarily engaged in the serving of food or

beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a “food service worker” pursuant to NY Labor Law Section 652(4). Upon Parks’ request Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee.

(b) With respect to catered events, a “Gratuity” shall be an amount no greater than 20% of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee’s customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee in total to its employees (other than management) who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. Upon Parks’ request Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee. Such documentation shall be signed and verified by an officer of Licensee.

(v) Notwithstanding anything to the contrary herein, Gross Receipts shall exclude all amounts received by Licensee as donations at fund-raising events for its benefit.

(vi) Notwithstanding anything to the contrary herein, Gross Receipts shall not include deposits made with Licensee for damage to the Licensed Premises unless and to the extent that Licensee retains such deposits for damage actually incurred.

(k) “Licensed Premises” or “Premises” shall mean:

- (1) The location designated as Parade Ground Snack Bar on Exhibit A-1 attached hereto.
- (2) During the time of the seasonal food truck event at Prospect Park, the area approved by Parks for such event.
- (3) The actual physical space occupied by Mobile Food Units at the locations approved by Parks for the operation of Mobile Food Units.
- (4) The portions of the Audubon Center at the Boathouse and the Picnic House on Exhibit A-2 attached hereto, but not including the Audubon Center Boathouse Café and the Picnic House Cafe, which are the subject of a separate permit from Parks to Licensee.

(l) “Third Party Events” shall mean any event to be held in Prospect Park operated or sponsored by third parties for which Parks has issued a permit and charged a fee pursuant to 56

RCNY §§ 2-08 and 2-10. All fees charged by Parks for Third Party Events shall be paid to Licensee. Such Third Party Events may include, but are not limited to, walk-a-thons, running and bicycle races, concerts and other festivals. Parks will draft and negotiate such permits in consultation with PPA.

(m) "Year" or "Operating Year" shall both refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year, except that the final Year of the Term (as hereinafter defined) of the License Agreement shall end on the Expiration Date (as hereinafter defined). Notwithstanding the foregoing, the first Year or Operating Year shall run from the Commencement Date to the next succeeding June 30, and the last Year or Operating Year shall run from the last July 1 during the Term to the Termination Date.

### **III. TERM OF LICENSE**

**3.1** This License shall become effective upon Parks giving written notice to proceed to Licensee ("Commencement Date") and, unless terminated sooner in accordance with this License Agreement, shall terminate ten (10) years from the date of execution of the M&O Agreement, or the last day of any subsequent renewal periods that are exercised pursuant to this License ("Termination Date" or "Expiration Date"). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the "Term". Parks, in its sole discretion, shall have the option to renew this License for up to two (2) additional five (5)-year periods, provided that Parks has renewed the M&O Agreement for the same periods. Notwithstanding the foregoing, in no event will the total length of the Term, including any renewal periods, exceed the shorter of (i) twenty (20) years or (ii) the term of the M&O Agreement, including any renewal periods.

**3.2** Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective after twenty-five (25) days written notice is sent to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein.

**3.3** Parks may terminate this License for cause as follows:

(a) Should Licensee breach or fail to comply in any material respect with any of the provisions of this License or fail to comply in any respect with any Federal, State or local law, rule, regulation or order affecting the License or the Licensed Premises with regard to any and all matters, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in

writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on one (1) day's notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

(c) Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which Commissioner may terminate this License.

**3.4** Upon expiration or sooner termination of this License by Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against Commissioner, Parks or City.

**3.5** In the event Commissioner terminates this License for reasons related to Paragraphs 3.3 above, any property of the Licensee on the Licensed Premises may be held and used by Commissioner in order to operate the License during the balance of the calendar year and may be held and used thereafter until all indebtedness of the Licensee hereunder, at the time of termination of this License, is paid in full.

**3.6** Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Licensed Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take immediate possession of the Licensed Premises.

**3.7** Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Premises unless such property is held by the Commissioner pursuant to Section 3.5. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned unless such property is held by the Commissioner pursuant to Section 3.5. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Premises during the time prescribed in this Agreement.

**3.8** If this License is terminated as provided herein, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

**3.9** If this License is terminated as provided in Section 3.3 hereof:

(a) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed

Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this License Agreement or to otherwise affect any such liability.

**3.10** No receipt of moneys by Parks from Licensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this License Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of Parks, on account of Licensee's liability hereunder.

**3.11** In the event this License Agreement is terminated, Parks will not reimburse Licensee's unamortized capital improvement cost.

#### **IV. GROSS RECEIPTS**

**4.1** In lieu of a license fee, Licensee will use all Gross Receipts received by it from or in connection with its operations at the Licensed Premises exclusively to provide for the management, maintenance, operation and programming of Prospect Park, including operations under this License Agreement. Licensee shall submit such reports to Parks and permit Parks such audit of its books and records as Parks shall reasonably require to assure that such Gross Receipts are so used. Such reports shall include, without limitation, a report to be furnished no later than October 31<sup>st</sup> each year, in a form that complies with the report attached as Exhibit B to this License Agreement, of data concerning all funds that Licensee has expended at Prospect Park for the preceding period of July 1<sup>st</sup> to June 30<sup>th</sup>. All information to be furnished to Parks shall be accurate and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by Licensee at Prospect Park.

**4.2** Intentionally omitted.

**4.3** (a) (1) On or before the thirtieth (30<sup>th</sup>) day following the end of each month of each Operating Year, Licensee shall submit to Parks, in the forms annexed as Exhibits D-1 and D-2 respectively or other forms satisfactory to Parks:

(i) A statement of Gross Receipts (Exhibit D-1), signed and verified by an officer of Licensee, reporting any Gross Receipts generated by Licensee under this License Agreement;

(ii) If the snack bar at the Parade Ground is sublicensed, a statement of gross revenues (Exhibit D-2), signed and verified by an officer of the sublicensee operating the snack bar at the Parade Ground, reporting any gross revenues generated by such sublicensee from operating the snack bar at the Parade Ground;

(2) (iii) Within 60 days after the end of each Operating Year upon request by Parks, Licensee shall submit to Parks an income and expense statement in a form satisfactory to Parks, signed and verified by an officer of each intermediary/producer which receives income from arranging or producing events at the Licensed Premises, such as but not limited to the seasonal food truck event, setting forth the income and expenses of each such intermediary from its activities at the Licensed Premises. Intermediaries and producers of events authorized under Section 1.1 (a)(2) of this License are exempt from this provision.

(b) Licensee's statements of Gross Receipts as well as all statements of gross revenues shall indicate whether or not the amounts reported are inclusive of sales tax collected.

(c) Licensee is solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts or from the compensation due under this License.

**4.4** On or before the sixtieth (60<sup>th</sup>) day following the end of each Operating Year, Licensee shall submit to Parks a detailed income and expense statement (on an accrual basis) pertaining to operations under this License, signed and verified by an officer of Licensee. At the same time Licensee shall submit to Parks a detailed income and expense statement signed and verified by an officer of the sublicensee of the snack bar at the Parade Ground, if any, pertaining to operations at that location. The statements referenced in the preceding two sentences shall be in a format approved by Parks. Neither Parks nor the City may disclose to any third party any documents or information with respect to Licensee's income or expenses in connection with its operations at the Licensed Premises, except to the extent otherwise required by court order or applicable law (including "freedom of information" laws and Local Law 28 of 2008, NYC Admin Code Sec. 18-134). For the avoidance of doubt, this prior sentence shall not apply to the Comptroller or any other authorized auditor nor prevent disclosure by the Comptroller or any other authorized auditor of any information derived from audits of this License Agreement.

**4.5 (a)** Licensee, during the Term of this License, shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner reasonably acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, with respect to the snack bar at the Parade Ground, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. Regarding events at the Boathouse and the Picnic House, Licensee must also document each such event via signed sequentially pre-numbered

contracts that capture event information, including the time and date of the event, the number of attendees and required payment or other method approved by Parks. Licensee shall also establish a dedicated bank account for all deposits related to this concession's generated revenue. All accounting and internal control related records shall be maintained for a minimum of ten (10) years after the date of creation of the record. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee prior to the commencement of the Term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of ten (10) years after the date of creation of the record.

(c) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Article shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License.

**4.6** In the event Parks reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.1 and 4.3 through 4.5 hereinabove, Licensee may be subject to a charge of five hundred dollars and zero cents (\$500.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty (30) days of such notice.

## **V. RIGHT TO AUDIT**

**5.1** Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee to verify compliance with this License Agreement and/or Gross Receipts as reported by the Licensee. Licensee shall also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two auditors conducting such

examination or audit at said location. Audits by Parks will be performed in a manner that will not unreasonably interrupt the operation of the business at the Licensed Premises.

**5.2** The failure or refusal of the Licensee to permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the Licensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle Parks to terminate this License following the giving of notice and expiration of applicable cure periods pursuant to Section 3.3(a) hereof.

**5.3** Notwithstanding the foregoing, the parties hereto acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised or abridged in any way.

## **VI. INTENTIONALLY OMITTED**

## **VII. ALTERATIONS**

**7.1 (a)** Licensee may alter the Licensed Premises only in accordance with the requirements of subsection (b) of this Section. Alterations shall become property of City, at its option, upon their attachment, installation or affixing.

**(b)** In order to alter Licensed Premises, Licensee must:

**(i)** Obtain Commissioner's written approval (which shall not be unreasonably withheld or delayed) for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings may pertain to contemplated purchases and/or work;

**(ii)** insure that work performed and alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to section (i) of this Article, in a good and workmanlike manner, and within a reasonable time; and

**(iii)** notify Commissioner of completion of, and the making final payment for, any alteration within ten days after the occurrence of said completion or final payment.

**(c)** Commissioner may, in his discretion, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect. Parks shall use reasonable efforts to give Licensee at least fourteen days' written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks shall use its reasonable efforts to perform such work in a way which minimizes interference with Licensee's operations at the Licensed Premises.

**(d)** To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or

other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. Also, for purposes of this provision, “Capital Improvements” shall mean all construction, reconstruction, renovations or Alterations of or to the Licensed Premises.

## **VIII. FIXED AND EXPENDABLE EQUIPMENT**

**8.1** Subject to the provisions of Article XI hereof, Licensee shall, at its sole cost and expense and to the reasonable satisfaction of the Commissioner, provide, and replace if necessary, all equipment and materials necessary for the successful operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

**8.2** City has title to all Fixed Equipment on the Premises as of the Commencement Date. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option it shall, at the termination or expiration of this License, be the responsibility of Licensee, at its sole cost and expense and to the satisfaction of Commissioner, to remove such equipment and restore the Licensed Premises to Parks in a condition no worse than at the commencement of the Term.

**8.3** Licensee shall supply at its own cost and expense all Expendable Equipment required for the proper operation of this License, and repair or replace same at its own cost and expense when reasonably requested by Commissioner. Licensee must acquire and use for the purpose intended any Expendable Equipment which the Commissioner reasonably determines is necessary to the operation of this License.

**8.4** Licensee must acquire, replace or repair, install or affix, at its sole cost and expense, any equipment, materials and supplies required for the proper operation of the Licensed Premises as described herein or as reasonably required by Commissioner.

**8.5** Title to all Expendable Equipment obtained by Licensee shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such termination or expiration, Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

**8.6** Licensee acknowledges that it is acquiring this License to use the Licensed Premises and Fixed Equipment thereon solely in reliance on its own investigation, that no representations, warranties or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee accepts them in their present condition “as is.”

**8.7** The equipment to be removed by Licensee pursuant to this License Agreement shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises, ordinary wear and tear excepted. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it may have caused to the Licensed Premises.

## **IX. UTILITIES**

**9.1** City shall directly pay for all electricity, water, gas, heat, coolant and sewer costs associated with the operation of the Audubon Center at the Boathouse and the Picnic House. In the event that the Licensee's Gross Receipts in any Operating Year from the operation of the Audubon Center at the Boathouse and the Picnic House exceed the level of such Gross Receipts in the year before Operating Year 1 by more than twenty percent (20%) or in the event that the cost of electricity, water, gas, heat, coolant and sewer exceeds the level of such costs in the year before Operating Year 1 by more than ten percent (10%), Licensee and Parks shall confer in good faith as to whether Licensee, or any Sublicensee, shall pay for any increase of the electricity, water, gas, heat, coolant and sewer costs associated with the operation of the Audubon Center at the Boathouse and the Picnic House over the level of such costs in the year before Operating Year 1. Except for such utilities, Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises or that any entity can or will make such service available. Except for the Audubon Center at the Boathouse and the Picnic House, Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage at the Licensed Premises, except for the Audubon Center at the Boathouse and the Picnic House, and an account with the appropriate service providers. Except for the Audubon Center at the Boathouse and the Picnic House, Licensee will be required to pay for any and all utility costs connected with its operations at the Licensed Premises during the Term. These utility costs include, but are not limited to, electricity as well as paying all water and sewer charges that the City's Department of Environmental Protection ("DEP") assesses for water usage. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

## **X. OPERATIONS**

**10.1 (a)** Licensee, at its sole cost and expense, shall operate and maintain the Licensed Premises for the use and enjoyment of the general public and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee may only operate at the Licensed Premises as set forth herein and only when the park in which the Licensed Premises is located is open. All hours of operation are subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. All services, menu items and merchandise and all rates, fees and prices, or changes thereto, to be charged by Licensee for any goods, rights or services provided pursuant to the operation of this License must also be approved in advance

in writing by Parks which shall not be unreasonably withheld or delayed. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the Commissioner grants the request, Licensee shall continue to be responsible for all other obligations under the License Agreement.

**(b)** Licensee shall comply with all national safety guidelines and federal, state and City laws, rules and regulations related to the operation and maintenance of the Licensed Premises.

**(c)** Licensee must provide all equipment necessary for the successful operation of the whole concession granted hereby.

**(d)** Licensee shall operate and maintain a properly licensed and amply stocked snack bar at the Parade Ground on a seasonal basis approved by Parks. Such snack bar must be of a high standard of quality. Licensee shall maintain an adequate inventory to assure a constant supply of food and beverages.

**(e)** Licensee acknowledges that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If Licensee wants to sell merchandise that uses the City's trademarks, Licensee will be required to purchase merchandise from authorized licensees of the City of New York. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products or non-park-related events. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Premises will result in the immediate termination of this License Agreement.

**(f)** The selling and/or advertisement of cigarettes, cigars, any other tobacco products or electronic cigarettes at the Licensed Premises is strictly prohibited. Licensee shall adhere to and enforce this policy.

**(g)** The sale and/or service of alcohol at the Licensed Premises is strictly prohibited without the prior written approval of Parks and the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction. Alcoholic beverages may only be served by Licensee in areas designated by Parks. All efforts must be made by Licensee to keep alcohol consumption discrete. Licensee must keep in mind that the Licensed Premises are in a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

**(h)** Any staff assigned by Licensee to sell food and beverages to the public must possess all Federal, State, and City authorizations, and possess, and at all times display, appropriate Department of Health and Mental Hygiene ("DOHMH") permits. Licensee may only provide food service at the Licensed Premises if it has obtained the appropriate, valid permits and authorizations required by DOHMH. At all times that any of the food service operations at the Licensed Premises are operating, a staff person with a valid DOHMH food handler's license must be present. If Licensee operates without all necessary permits and licenses, it may be subject to fines and/or confiscation of merchandise.

**(i)** With respect to the seasonal food trucks and Mobile Food Unit(s), Licensee shall obtain a DOHMH Vendor License for each person designated as an operator of a Mobile Food Unit and a DOHMH Mobile Food Vending Unit Permit for its Mobile Food Unit(s). Licensee must submit both a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit to Parks before the operation of seasonal food trucks and Mobile Food Unit(s) can commence. During the License Term, if Licensee operates a seasonal food truck or Mobile Food Unit without a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit, Licensee will be instructed to cease operations and will be subject to fines. When

warranted and pursuant to law, ordinance or regulation, Officers of the Parks Enforcement Police (PEP), New York City Police Department, New York Fire Department and DOHMH may confiscate the Mobile Food Unit(s), including merchandise.

(j) Licensee may install or have installed two vending machines at the Picnic House for snack and beverage service. In the event that Licensee places vending machines at the Picnic House, Licensee will be required to comply with the Citywide Beverage Vending Machines Standards and Standards for Food Vending Machines, attached hereto as Exhibits E-1 and E-2 respectively. Licensee shall remove any vending machine at the direction of the Commissioner. In addition, the beverage and/or food standards may be changed during the Term of the License. In the event that Licensee installs vending machines at the Picnic House, the Licensee will be required to comply with any new and/or changed food or beverage standards in the operation of all vending machines at the Picnic House. Notwithstanding the foregoing, if the implementation of such new or changed standards will result in a material adverse effect on Licensee's costs, upon submission to Parks of documentation satisfactory to Parks demonstrating such effect, Licensee and Parks may amend this License as agreed between Parks and Licensee.

**10.2** At the Parade Ground snack bar Licensee shall, at its sole cost and expense, print, frame and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days and hours and rates, fees and prices.

**10.3** (a) Smoking and the use of electronic cigarettes anywhere on the Licensed Premises is strictly prohibited.

(b) Additionally, Licensee shall not use in its operations any polystyrene packaging or food containers.

(c) Licensee is prohibited from selling any beverages in glass bottles. All beverages shall be in non-glass, shatter-proof containers.

(d) Licensee shall adhere to and enforce the prohibitions contained in this Section 10.3.

**10.4** Licensee, at its sole cost and expense, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments thereto) that may be required for the operation and maintenance of the Licensed Premises in accordance with all applicable Federal, State, and City laws, rules and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. . With respect to the Parade Ground Snack Bar, the Picnic House and the Audubon Center at the Boathouse, in the event that, at the Commencement Date Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a "Letter of No Objection" from the Department of Buildings ("DOB"). Furthermore, with respect to the Parade Ground Snack Bar, the Picnic House and the Audubon Center at the Boathouse, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy, where required, and does not have a "Letter of No Objection," Licensee shall diligently pursue a temporary Certificate of Occupancy and a Certificate of

Occupancy, such certificate to be obtained within a reasonable time, as determined by the Commissioner, or may conduct its operations in temporary structures that have been approved by Parks, such approval not to be unreasonably withheld or delayed. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations hereunder.

**10.5** Licensee warrants that all merchandise, food, beverages, and services of any kind sold or rented pursuant to this License shall be of a high quality. Licensee shall operate in such a manner as to maintain a very high health inspection rating.

**10.6** RESERVED.

**10.7** An officer or member of the Licensee shall personally operate this License or employ an operations manager at the Licensed Premises. A member of the Licensee or manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the manager or officer in the event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor or sublicensee whenever reasonably requested by Commissioner.

**10.8** Licensee shall provide equipment which will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee's banking institution. Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

**10.9** Licensee, at its sole cost and expense, shall provide, hire, train, supervise and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (a) collecting and safeguarding all monies generated under this License;
- (b) maintaining the Licensed Premises; and
- (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

**10.10** Licensee must provide Americans with Disabilities Act ("ADA") accessibility throughout the Licensed Premises. Licensee shall comply with all City, State and Federal laws relating to access for persons with disabilities. The Licensee shall also comply with all New York City, State and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required. Such accessibility shall be clearly indicated by signs and included in all advertising by Licensee. Licensee shall include in its advertising and promotion program, described in Section 10.15 below, a plan which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities.

**10.11** Pursuant to a plan approved by Parks, Licensee shall, at its sole cost and expense, be responsible for all security at the Licensed Premises during the Term and shall provide for a twenty-four hour per day security system at the Licensed Premises in accordance with plans that have received the prior written approval of Parks which shall not be unreasonably withheld or delayed. Licensee shall secure the Licensed Premises and any equipment every evening before closing for the day during the Term.

**10.12** Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring on the Licensed Premises, on a regular basis and in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

**10.13** Licensee shall promptly notify Commissioner of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty and substantial damage of any character.

**10.14** Licensee shall maintain close liaison with the Parks Enforcement Patrol and New York City Police Department. Licensee shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use its commercially reasonable efforts to prevent illegal activity on the Licensed Premises and shall immediately report any illegal activity to the police upon becoming aware of same.

**10.15** Licensee may establish an advertising and promotion program, subject to Parks prior written approval, which will not be unreasonably withheld or delayed. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter except advertising matter which in the sole discretion of the Commissioner is indecent, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of the Licensed Premises, Parks, or the City of New York. Licensee may release news items to the media as it sees fit. If the Commissioner in his reasonable discretion, however, finds any advertising or other releases to be unacceptable, then Licensee shall cease or alter such advertisements or releases as directed by the Commissioner. The Commissioner shall have prior reasonable approval as to design and distribution of all advertising and promotional materials.

**10.16** The design, placement and content of all signage, including signage which includes Licensee's name, trade name(s) and/or logo(s), is subject to Parks' prior written approval. Any and all signage is subject to Parks' prior written approval. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not advertise any product brands without Parks' prior written approval. Licensee is prohibited from displaying, placing or permitting the display or placement of advertisements in the Licensed Premises without the prior written approval of Parks. The display or placement of tobacco or electronic cigarette advertising shall be prohibited. The advertising of alcoholic beverages shall not be

permitted, but Licensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. The following standards will apply to any allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks at Licensee's sole cost and expense.

**10.17** Licensee shall, at its sole cost and expense, post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. If Licensee contemplates placing any signs off-site, such as on nearby highways or streets, Licensee shall be responsible for obtaining any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval which shall not be unreasonably withheld or delayed.

**10.18** Licensee must obtain the prior written approval of Parks prior to entering into any marketing or sponsorship agreement. In the event Licensee breaches this provision, Licensee shall take any action that the City may deem necessary to protect the City's interests.

**10.19** Should Commissioner reasonably determine that Licensee is not operating the Licensed Premises in a satisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to Commissioner within the reasonable timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee, notwithstanding any other provisions herein, then Commissioner may terminate this License.

**10.20** Should Commissioner, in Commissioner's sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have 24 hours to correct such unsafe or emergency condition. During any period where the Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises then the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

**10.21** Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

**10.22** Licensee shall operate the Licensed Premises in accordance with all applicable FDNY Codes.

**10.23** Parks' inspectors shall visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine whether or not Licensee is in compliance with the terms of this License Agreement. Based on their inspections, should Licensee fail to provide the cleaning, maintenance, and operational services required by this License, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the time frame set forth in such notice. If Licensee fails to cure the violation within the time frame set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess Licensee as liquidated damages payable to Parks Five Hundred (\$500.00) Dollars per day with respect to each violation of the License, until the shortcomings have been corrected.

If an assessment is received for a violation, there is a process by which the assessment may be appealed if Licensee feels that the assessment has been assessed in error. The procedure is outlined below:

1. Filing an Appeal

- A. If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to Parks within ten (10) days along with a statement of reasons why it believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Licensee's appeal (such as photographs, documents, witness statements, etc) should also be included.
- B. If no appeal is received within 10 days of the date the assessment is mailed, the assessment shall be considered final and charged to Licensee's account.

2. Adjudication of Appeal

- A. The appeal shall be sent to the Director of Operations Management & Planning, whose office is located at the Arsenal, 830 Fifth Avenue, New York, NY 10065. The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of Parks.
- B. The Director of Operations Management & Planning is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to Licensee in person.

**10.24** Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with Licensee or operate near the Licensed Premises. Parks encourages concessionaires to report illegal vendors by calling 311.

**10.25** Parks makes no representations that there is adequate storage at the Licensed Premises. Licensee, at its sole expense, will be responsible for the storage of all equipment and personal property. Licensee shall be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation of the concession granted hereby. Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of Parks. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior written approval which shall not be unreasonably withheld or delayed. Licensee will be required to secure all outdoor equipment, if any, on a nightly basis and anytime the concession granted hereby is closed.

**10.26** Licensee is responsible for providing safe lighting throughout the Licensed Premises. Licensee shall replace lamps after lamp outages within ten (10) days of the reported outage, except for B-pole lights which are the property and responsibility of the NYC Department of Transportation.

**10.27** Licensee shall have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concession granted hereby. Parks reserves the right to require that all staff wear uniforms that have been approved in writing by Parks which shall not be unreasonably withheld or delayed.

**10.28** Licensee shall comply with all laws, rules and regulations of appropriate agencies, specifically DEP, regarding noise levels, and Licensee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for music or music programming. Licensee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Any musical programming or other types of entertainment must be approved by Parks which shall not be unreasonably withheld or delayed. A cabaret license will be strictly prohibited at the Licensed Premises.

10.29 In order that accommodations may be made for the transportation of goods, services, wedding parties, and guests with special needs to the Licensed Premises, Licensee shall be permitted to issue permits for vehicle access. Licensee shall furnish a quarterly report to Parks specifying to whom such permits were issued in the previous quarter, the number of permits issued to each such person, and the duration of each such permit. *Parks reserves the right to require Parks' pre-approval of such permits at any time.*

10.30 Licensee shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Rider annexed hereto as Exhibit F.

## **XI. MAINTENANCE, SANITATION AND REPAIRS**

**11.1** (i) Licensee shall, at its sole cost and expense (or through arrangements with third parties), operate and maintain the snack bar at the Parade Ground in good and safe condition and in accordance with industry standards during the Term. This includes, but is not limited to, the maintenance of and the making of all necessary repairs to the entire snack bar at the Parade Ground, all interior and exterior structures, building systems, utility systems and connections, sewer systems and connections, restrooms (including the stocking of supplies), equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures during the Term. In addition, all signs and structures at the snack bar at the Parade Ground must be kept in good condition and free of graffiti.

(ii) With respect to the Picnic House:

Licensee shall be responsible for

- maintaining and cleaning the interior of the upper level of the building
- repairs to the interior finishes and fixtures of the upper level
- repairs to the upper level entrance way, patio, plantings and gate
- maintaining the windows and doors

Licensee shall not be responsible for

- all repairs to the structure and envelope of the building
- mechanical, electrical and plumbing systems of the building
- the removal of graffiti.

(iii) With respect to the Audubon Center at the Boathouse:

Licensee shall be responsible for

- maintaining and cleaning the interior of the building
- repairs to the interior finishes and fixtures of the building
- maintaining the windows and doors

Licensee shall not be responsible for

- all repairs to the structure and envelope of the building
- mechanical, electrical and plumbing systems of the building
- the removal of graffiti.

(iv) For purposes of subdivisions (ii) and (iii) above, “structure” shall mean the foundation, footings, facade, and/or load-bearing or strengthening columns, beams, or other load-bearing or strengthening elements of the building (including load bearing elements of the roof) or the plumbing lines, and “envelope” shall mean roof and walls. Windows and doors shall be Licensee’s responsibility.

(v) The erecting of any ancillary structures at the Licensed Premises shall be subject to Parks' prior written approval which shall not be unreasonably withheld or delayed.

**11.2** During the Term, Licensee shall perform its maintenance duties under this License Agreement to the reasonable satisfaction of Commissioner. All such maintenance shall be performed by Licensee in a good and worker-like manner."

**11.3** At Parks' request during the Term, upon reasonable prior written notice Licensee shall conduct site inspections at the Licensed Premises with a representative of Parks. Such inspections shall assess the condition of the Licensed Premises and all Fixed and Additional Fixed Equipment therein, and determine the nature and extent of repairs, if any, to be performed by Licensee. Licensee shall make all necessary repairs in accordance with Section 11.1 during the Term.

**11.4** During the Term, Licensee shall be responsible for, at its sole cost and expense, clean-up of all waste, garbage, refuse, rubbish and litter at the Licensed Premises and the removal of all snow from the Licensed Premises. Licensee shall provide adequate and easily accessible waste and recycling receptacles, approved by Parks. After collection by Licensee, Parks will remove all waste, garbage, refuse, rubbish and litter from the Licensed Premises in accordance with a schedule to be agreed between Licensee and Parks. The location and placement of all waste and recycling receptacles is subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. Licensee shall comply with all City, State, and Federal regulations regarding recycling. In addition, Licensee shall demonstrate to Parks' reasonable satisfaction, through a detailed maintenance plan, that it will keep and maintain the Licensed Premises in excellent condition during the Term.

**11.5** During the Term Licensee shall maintain and improve the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. In addition, Parks requires that any trees on the Licensed Premises be pruned as needed. Licensee shall submit detailed plans to Parks of all horticultural and landscaping work to be performed. All work to be performed at the Licensed Premises is subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. In addition, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before any work is performed, and such work shall be of a quality which meets Parks' standards. Licensee is prohibited from cutting down, pruning or removing any trees on the Licensed Premises without the prior written approval of Parks. Any attachments to the trees, such as lights, will not be permitted.

**11.6** At the expiration or sooner termination of this License, Licensee shall turn over the Licensed Premises and the Fixed and Additional Fixed Equipment to Parks in a reasonably well maintained state, in good repair, ordinary wear and tear excepted.

**11.7** With respect to the snack bar at the Parade Ground and the Mobile Food Units, at its sole cost and expense, Licensee shall keep all signs and structures in good condition and shall

remove any and all graffiti that may appear on the buildings and structures on the snack bar and on the Mobile Food Units during the Term hereof. Such graffiti removal shall be commenced promptly after the appearance of any such graffiti and shall continue until such graffiti is removed.

**11.8** Licensee shall conduct regular pest control inspections and extermination, as needed. Pest control methods chosen by Licensee shall be subject to the approval of Parks. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

**11.9** For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity, Licensee shall maintain up-to-date Petroleum Bulk Storage (“PBS”) registrations with State Department of Environmental Conservation (“DEC”) and register such tanks with the DEP. Licensee shall assume all registration and update costs. Licensee shall keep a copy of the PBS Certificate on site and provide copies to Parks 5-Boro Office on Randalls Island, New York. Licensee shall perform or have performed a tightness test conducted at least once every five years, to comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks must be pre-approved by Parks which shall not be unreasonably withheld or delayed.

## **XII. APPROVALS**

**12.1** Licensee is solely responsible for obtaining all government approvals, permits and licenses required by Federal, State and City laws, regulations, rules and orders to fulfill this License. Parks shall provide Licensee with reasonable cooperation in obtaining the necessary approvals, permits, and licenses and shall not unreasonably withhold or delay its consent to signing, where its signature is needed, any accurate application made by Licensee required to obtain such approvals, permits and licenses.

**12.2** Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by Commissioner or his duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative.

## **XIII. PARKS EVENTS**

**13.1 (a)** Licensee shall cooperate with Parks in connection with unanticipated events and emergencies at the Licensed Premises.

**(b)** (i) In addition to the services and programming to be performed by Licensee described in this License Agreement, Parks may provide, or provide permits for, additional program activities on the Licensed Premises, including other non-profit or public events (“Parks’ Events”).

(ii) Parks agrees that it will not schedule an event or program activity at any time during the occurrence of an event scheduled by the Licensee.

(iii) Parks shall consult with the Licensee prior to issuing permits for or scheduling or approving additional program activities or organized events. Parks shall use reasonable efforts to provide the Licensee with no less than thirty (30) (or lesser period as shall be acceptable by the Licensee) days prior written notice of any such proposed program activities.

(iv) Parks will use reasonable efforts to ensure that the parties authorized by it to conduct Parks' Events will be responsible for maintenance and clean-up associated with any such Parks' Event.

#### **XIV. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES**

**14.1** Subject to the terms of this Article 14, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent (10%) or more of the shares of or interest in Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided herein which approval shall not be unreasonably withheld or delayed. The Commissioner may request any additional information he deems reasonably necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than ten percent (10%) in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Section 14.

**14.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of more than ten percent of stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner, which shall not be unreasonably withheld. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are

intended to assure the City that the Licensed Premises are operated by persons, firms and corporations, which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises.

**14.3** No consent to or approval of any assignment or sublicense granted pursuant to this Section 14 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

## **XV. PARKS CONSTRUCTION**

**15.1** Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least one week's notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner. In the event that Licensee must close the Licensed Premises for the purposes provided for in this License because of such Parks' work, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or willful misconduct of Licensee.

## **XVI. COMPLIANCE WITH LAWS**

**16.1** Licensee shall comply and cause its employees and agents to comply with all laws, rules, regulations and orders now or hereafter prescribed by Commissioner, and to comply with all laws, rules, regulations and orders of any City, State or Federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

**16.2** Licensee shall not use or allow the Licensed Premises, or any portion thereof to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the Term of this License.

## **XVII. NON-DISCRIMINATION**

**17.1** Licensee shall not unlawfully discriminate against any employee, applicant for employment or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation.

**17.2** All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

## **XVIII. NO WAIVER OF RIGHTS**

**18.0** No acceptance by Commissioner of any compensation, fees, penalty sums, charges or other payments in whole or in part for any periods after a default of any terms and conditions herein shall be deemed a waiver of any right on the part of Commissioner to terminate this License. No waiver by Commissioner of any default on the part of Licensee in performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

## **XIX. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION**

**19.0** Notwithstanding the indemnification provision of the M&O Agreement, Licensee shall indemnify the City in accordance with this Section 19 as follows:

**19.1** A. Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its sublicensees, contractors or subcontractors.

B. Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

C. Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person.

D. Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Licensee or the Licensed Premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of Licensee's personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used generated, treated or disposed of on the Licensed Premises. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

**19.2** A. To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself has been negligent) and/or Licensee's failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by Licensee,

the City and its officials and employees shall be partially indemnified by Licensee to the fullest extent permitted by law.

B. Licensee's obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be (i) limited in any way by Licensee's obligations to obtain and maintain insurance under this Licensee, nor (ii) adversely affected by any failure on the part of the City or its officials and employees to avail themselves of the benefits of such insurance.

## **XX. INSURANCE**

**20.1** A. Throughout the Term, Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require higher liability limits or other types of insurance if, in the reasonable opinion of Commissioner, Licensee's operations warrant it.

B. Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

**20.2** A. Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License Agreement. Coverage shall be at least as broad as the most recent edition of ISO Form CG 2026. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage least as broad as ISO Form CG 2026.

C. If Licensee or a contractor or sublicensee of Licensee serves alcoholic beverages anywhere on the Licensed Premises, Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, and name the City together with its officials and employees, as additional insureds. Such insurance shall be effective prior to the commencement of any such operations and continue throughout such operations. At his sole discretion, the Commissioner may increase or decrease the limit(s) if the Commissioner believes that the nature of such operations merits an increase or decrease.

**20.3** Licensee shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this License, and such insurance shall comply with the laws of the State of New York.

**20.4** A. With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

**20.5** A. Licensee shall maintain comprehensive broad form property insurance (such as an "All Risk" policy) covering the snack bar at the Parade Ground ("Snack Bar). Such insurance shall provide full Replacement Cost coverage for the Snack Bar (without depreciation or obsolescence clause) at a value reasonably determined by Parks and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), subsidence and earthquake. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

B. This section does not require coverage for damage caused by flooding.

C. The limit of such property insurance shall be no less than the full Replacement Cost of the Snack Bar, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an "all risk" or "special perils form" insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Snack Bar.

D. In the event of any loss to any of the Snack Bar, Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner's discretion, allow the City itself to adjust such claim.

**20.6** Licensee represents and warrants that its operations at the Licensed Premises will not involve petroleum products (other than to operate vehicles in connection with Licensee's use of the Property), asbestos, lead, pcb's or any other hazardous materials.

**20.7** A. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Commissioner.

B. Policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

C. Whenever this article requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used,

provided that Licensee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

D. There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to Licensee under all primary, excess and umbrella policies covering operations under this License Agreement.

F. All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065 and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

G. All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

**20.8** A. Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Commissioner prior to execution of this License Agreement.

B. For Workers' Compensation, Employers Liability Insurance, and Disability Benefits insurance policies, Licensee shall submit one of the following:

1. C-105.2 Certificate of Worker's Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

C. For all insurance required under this Article other than Workers Compensation, Employers Liability, and Disability Benefits insurance, Licensee shall submit one or more

Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form annexed hereto as Exhibit G or as otherwise required by the Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

D. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with subsections (B) and (C) directly above.

E. Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee's obligation to ensure that insurance fully consistent with the requirements of this Article is secured and maintained, nor does it waive Licensee's liability for its failure to do so.

F. Licensee shall be obligated to provide the City with a copy of any policy of insurance required under this Article upon request by the Commissioner or the New York City Law Department.

**20.9** A. Licensee may satisfy its insurance obligations under this Article through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

B. In the event Licensee requires any contractor to procure insurance with regard to any operations under this License Agreement and to name Licensee as an Additional Insured thereunder, Licensee shall ensure that such contractor also name the City, including its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

C. Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy.

D. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License Agreement (including notice to Commercial General Liability insurance carriers for events relating to Licensee's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

E. Licensee's failure to secure and maintain insurance in conformity with this Article, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Article shall constitute a material breach of this License Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

F. Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License Agreement or the law.

G. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article, Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

H. Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile insurance, Licensee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

H. In the event Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this License Agreement and requires such entity to name Licensee as an additional insured under such insurance, Licensee shall ensure that such entity also names the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

I. In the event Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Parks and Recreation, The Arsenal, 830 Fifth Avenue, New York, NY 10065 and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

## **XXI. WAIVER OF COMPENSATION**

**21.1** Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges Commissioner, his agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid.

**21.2** Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by Commissioner sooner than the fixed term because the Licensed Premises are

required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

## **XXII. INVESTIGATIONS**

**22.1 (a)** The parties to this License shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (hereinafter "State") or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

**(b) (i)** If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

**(ii)** If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

**(A)** The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

**(B)** If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 22 (d) below without the City incurring any penalty or damages for delay or otherwise.

**(c)** The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

**(i)** The disqualification for a period not to exceed five years from the date of an adverse determination of any person or entity of which such person was a member at the time

the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

**(ii)** The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this license, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

**(d)** The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 22(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 22(d) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

**(i)** The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

**(ii)** The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

**(iii)** The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

**(iv)** The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (c) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (b) (ii)(A) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

**(e) (i)** The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

**(ii)** The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(iii) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(iv) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

(f) In addition to and notwithstanding any other provision of this License the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money goods requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Licensee, or affecting the performance or this License Agreement.

### **XXIII. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

**23.1** This License Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

**23.2** Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License Agreement and its intent, Licensee agrees:

(a) If the City initiates any action against the Licensee in Federal Court or in New York State Court, service of process may be made on the Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to the Licensee at its address set forth in this License, or to such other address as the Licensee may provide to the City in writing; and

(b) With respect to any action between the City and the Licensee in New York State Court, the Licensee hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

**23.3** With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

**23.4** If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action,

the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

#### **XXIV. WAIVER OF TRIAL BY JURY**

**24.1** (a) Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License.

(b) No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within eighteen (18) months of the termination or conclusion of this License, or within eighteen (18) months after the accrual of the cause of action, whichever first occurs.

(d) In the event any claim is made or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all reasonable assistance which the City of New York may reasonably require of Licensee.

#### **XXV. CUMULATIVE REMEDIES - NO WAIVER**

**25.0** The specific remedies to which the City may resort under the terms of this License are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any other default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this License, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

#### **XXVI. EMPLOYEES**

**26.0** All experts, consultants and employees of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

#### **XXVII. BACKGROUND CHECKS**

**27.1** (a) For purposes of this Paragraph, the word "personnel" means each employee and volunteer whose duties and responsibilities relate primarily to working with children or in close

proximity to children. Licensee will be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references, and suitability for working with children. Licensee agrees to comply with all guidelines and procedures of Parks concerning the screening and employment of personnel provided in writing to Licensee, including, but not limited to, the following:

- (i) Licensee will be responsible for screening of all personnel, including:
    - (A) substantiating credentials, including, but not limited to, School-Age Child Care (SACC) Certification in accordance with the New York Codes, Rules, and Regulations (“NYCRR”) under 18 NYCRR 414; and,
    - (B) reference checks.
  - (ii) Licensee agrees not to hire or retain any personnel who refuse to:
    - (A) provide the names of references;
    - (B) provide documentation of credentials;
    - (C) provide information on criminal conviction records pursuant to Section 296 of the New York State Executive Law and Section 8-107 of the Administrative Code of the City of New York as outlined in Background Checks Rider attached hereto as Exhibit H; and,
    - (D) provide other requested information, which may bear on the applicant’s fitness to work with or in close proximity with children.
  - (iii) Licensee agrees not to hire or retain any personnel:
    - (A) who, to Licensee’s knowledge, have not completely and truthfully reported information concerning their criminal convictions pursuant to Section 296 of the New York State Executive Law and Section 8-107 of the Administrative Code of the City of New York as outlined in Background Checks Rider attached hereto as Exhibit H;
    - (B) to the extent disclosed by a background check consistent with Section 296 of the New York State Executive Law and Section 8-107 of the Administrative Code of the City of New York, whose criminal convictions record directly bears on their fitness to work with or in close proximity with children, or whose employment would involve an unreasonable risk to the safety or welfare of children, subject to and consistent with Article 23-A of the New York State Correction Law; and,
    - (C) who have been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with this Registry.
- (b) Licensee and Parks agree that Licensee is an independent contractor. It is understood and agreed that all personnel employed by Licensee are employees of Licensee and are not employees of the City, and that Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged pursuant to this Agreement. Licensee agrees that neither it nor its personnel or agents will hold themselves out as, or claim to be, officers or employees of the City of New York, or of any department, agency, or unit thereof, and that they will not, by reason hereof, make any claim, demand, or application for any right or privilege applicable to an officer or employee of the City of New York, including, but not limited to, Workers’ Compensation and Disability Insurance coverage, unemployment insurance benefits, social security coverage, or employee retirement membership or credit. Nothing included in this Paragraph or in any other provision of this Agreement shall be construed to impose any liability or duty upon the City to the persons, firms, or corporations employed or engaged by Licensee as employees, servants, agents, consultants, experts, or independent contractors or in any other

capacity whatsoever or to render the City liable to any persons, firms, corporations, associations or to any government for the acts, omissions, liabilities, obligations, and/or taxes of any nature, including, but not limited to, unemployment insurance of Licensee or its consultants, experts, employees, servants, agents, or independent contractors.

**XXVIII. INDEPENDENT STATUS OF LICENSEE**

**28.0** Licensee is not an employee of the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be officers, employees, or agents of the City, or of any department, agency, or unit thereof, and they will not make any claim, demand, or application to or for any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

**XXIX. INTENTIONALLY OMITTED**

**29.0** Intentionally Omitted.

**XXX. CONFLICT OF INTEREST**

**30.0** Licensee represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this License which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

**XXXI. PROCUREMENT OF AGREEMENT**

**31.1** Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Licensee further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Licensee makes such representations and warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

**31.2** For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this License without liability, entitling the City to recover all monies paid hereunder, if any, and the Licensee shall not make any claim for, or be entitled to recover, any sum or sums due under this license. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to

claim damages or refuse payment or to take any other action provided by law or pursuant to this License.

**XXXII. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

**32.0** No claim whatsoever shall be made by the Licensee against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this License.

**XXXIII. ALL LEGAL PROVISIONS DEEMED INCLUDED**

**33.0** Each and every provision of law required to be inserted in this License shall be and is deemed inserted herein, whether or not actually inserted.

**XXXIV. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS**

**34.0** If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

**XXXV. JUDICIAL INTERPRETATION**

**35.0** Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule of construction that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this License and that legal counsel was consulted by each responsible party before the execution of this License.

**XXXVI. MODIFICATION OF AGREEMENT**

**36.0** This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may be modified from time to time by agreement in writing, but no modification of this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

**XXXVII. NOTICES**

**37.0** Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with Commissioner. Notices

may also be given by facsimile transmission to the fax numbers for each party provided at the beginning of this License Agreement, which notices shall be effective upon transmission; however, a confirmation copy of any fax notice shall thereafter, within a reasonable time, be sent by one of the other permitted forms of notice under this Section 37.

#### **XXXVIII. LICENSEE ORGANIZATION, POWER AND AUTHORITY**

**38.0** Licensee represents and warrants that Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.

#### **XXXIX. MISCELLANEOUS**

**39.0** The headings of sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect the construction thereof. The use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others as the context may require.

**IN WITNESS WHEREOF**, the parties hereto have caused this License Agreement to be signed and sealed on the day and year first above written.

CITY OF NEW YORK DEPARTMENT OF  
PARKS & RECREATION

PROSPECT PARK ALLIANCE, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

\_\_\_\_\_  
Acting Corporation Counsel

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this day of \_\_\_\_\_, 2017 before me personally came \_\_\_\_\_ to me known, and known to be the \_\_\_\_\_ of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

---

Notary Public

STATE OF NEW YORK

ss:

COUNTY OF

On this day of \_\_\_\_\_, 2017 before me personally came to me known and who, being duly sworn by me, did depose and say that (s)he is the \_\_\_\_\_ of Prospect Park Alliance, Inc. and that (s)he was authorized to execute the foregoing instrument on behalf of that company and acknowledged that (s)he executed the same on behalf of that company for the purposes mentioned therein.

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Notary Public

**EXHIBIT A-1**

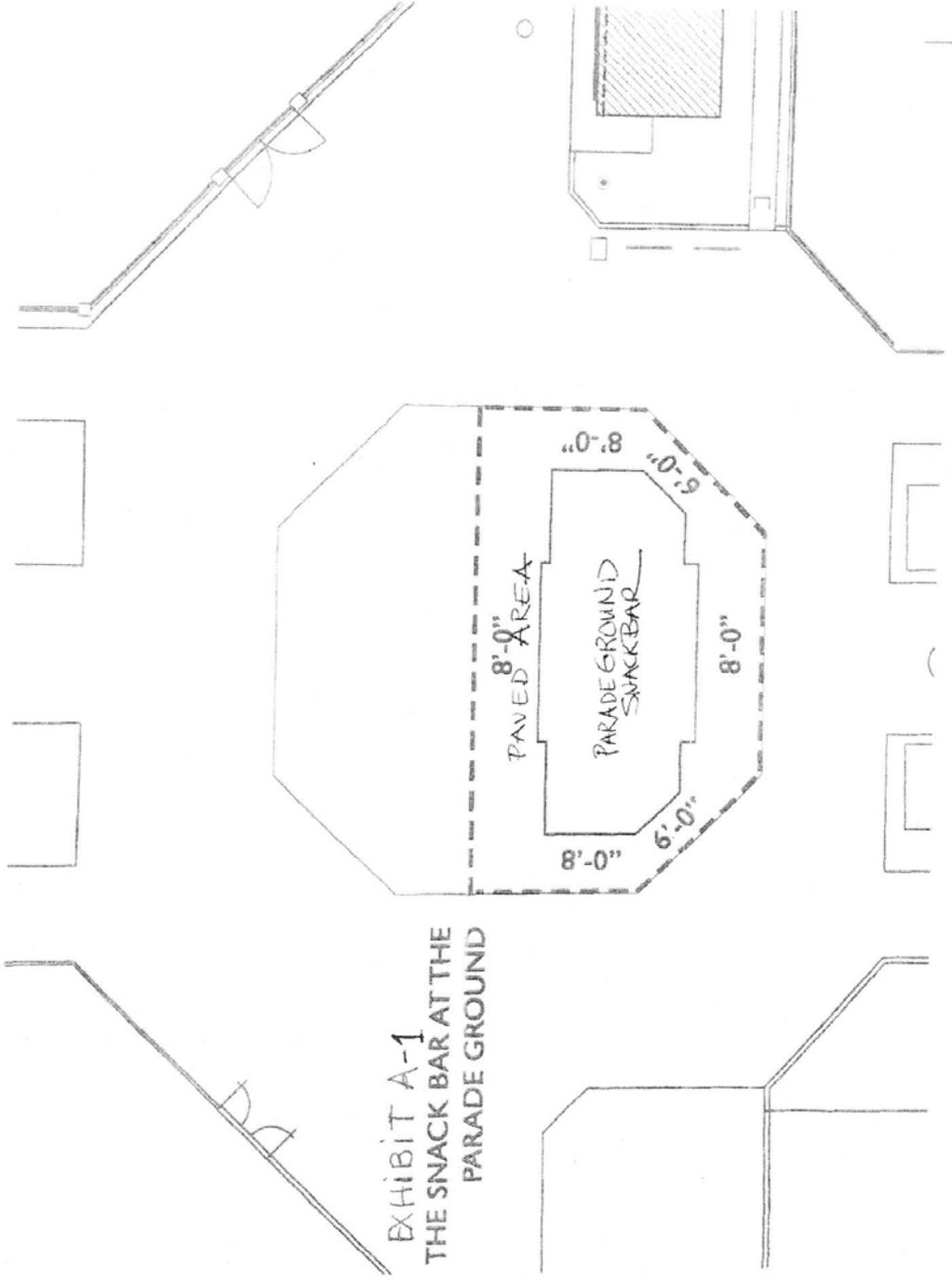


EXHIBIT A-1  
 THE SNACK BAR AT THE  
 PARADE GROUND

**EXHIBIT A-2**

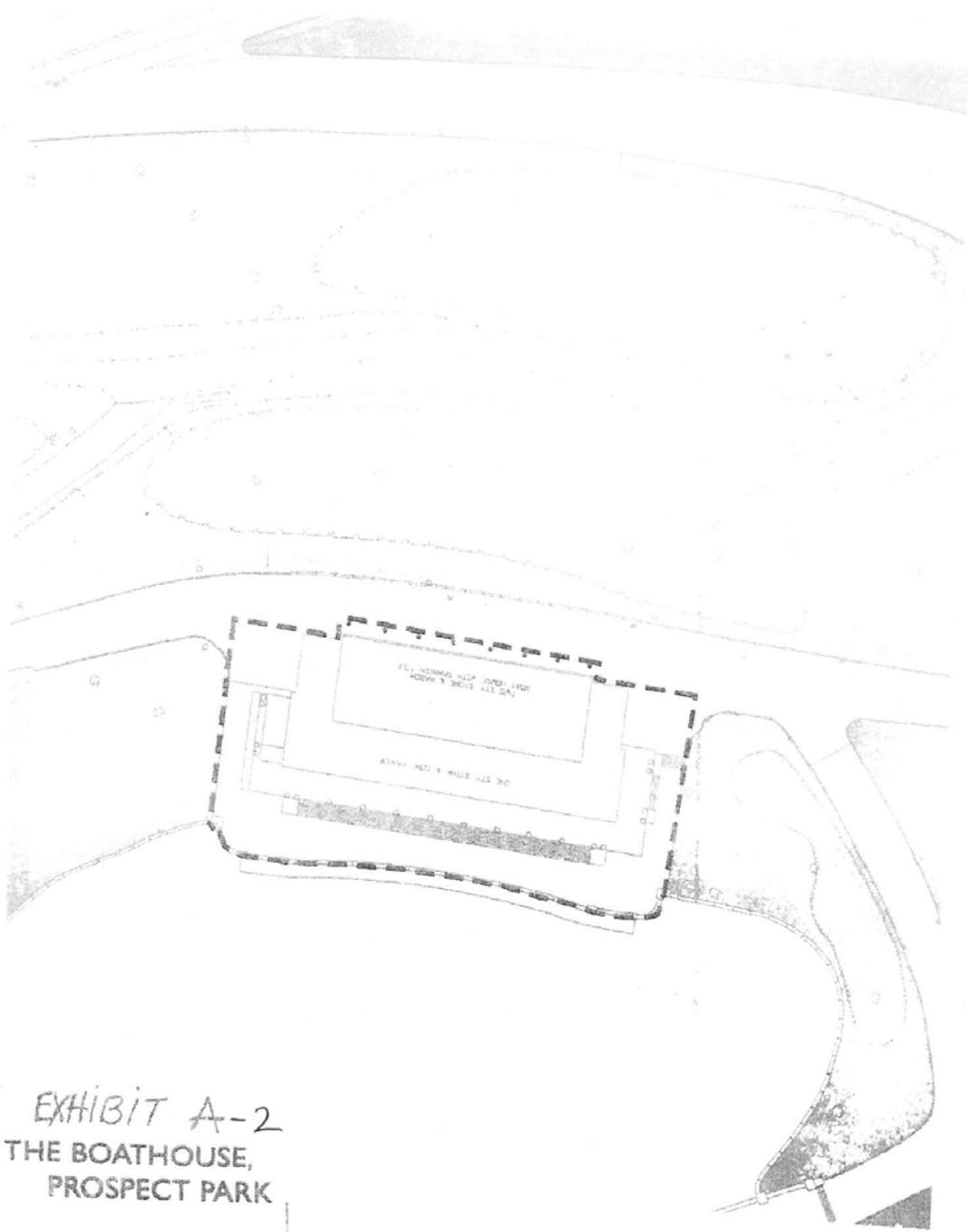


EXHIBIT A-2  
THE BOATHOUSE,  
PROSPECT PARK

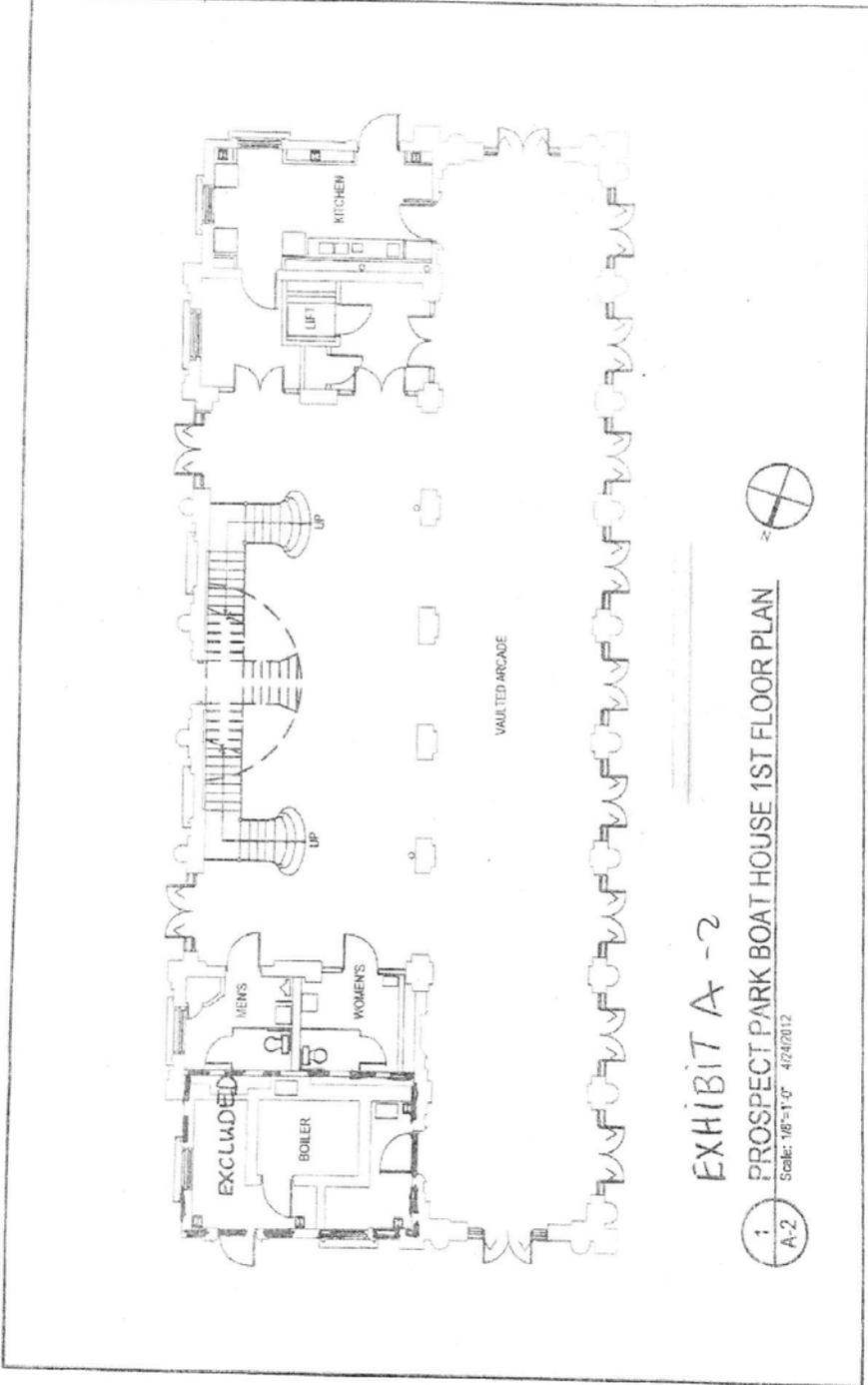


EXHIBIT A -2

1 PROSPECT PARK BOAT HOUSE 1ST FLOOR PLAN  
 A-2 Scale: 1/8"=1'-0" 4/24/2012



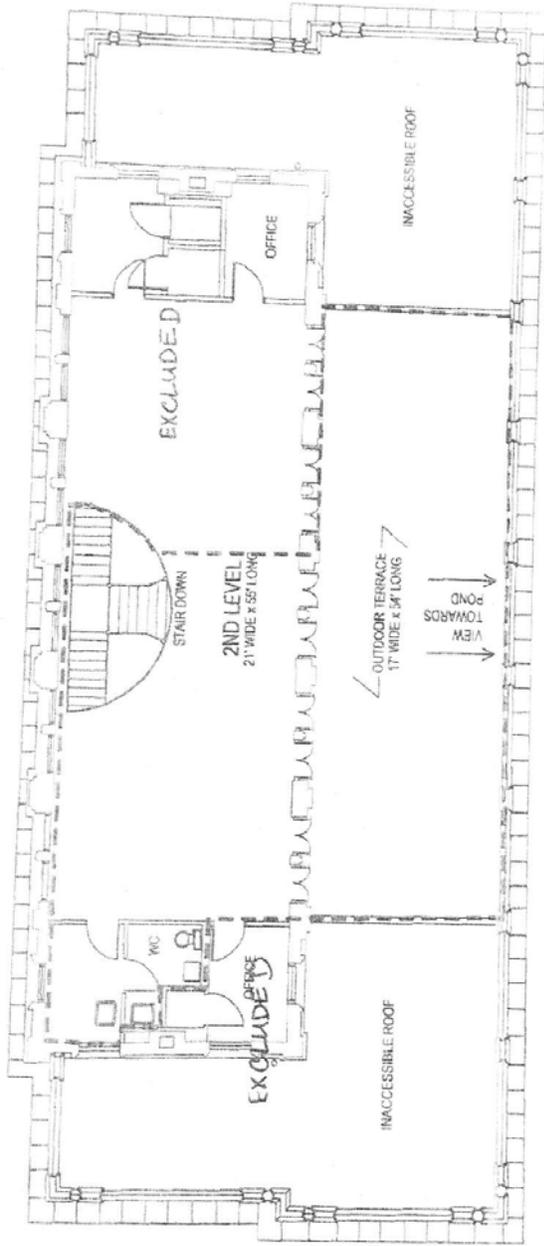


EXHIBIT A-2

1  
A-2

PROSPECT PARK BOAT HOUSE 2ND FLOOR PLAN

Scale: 1/8" = 1'-0" 4/24/2012



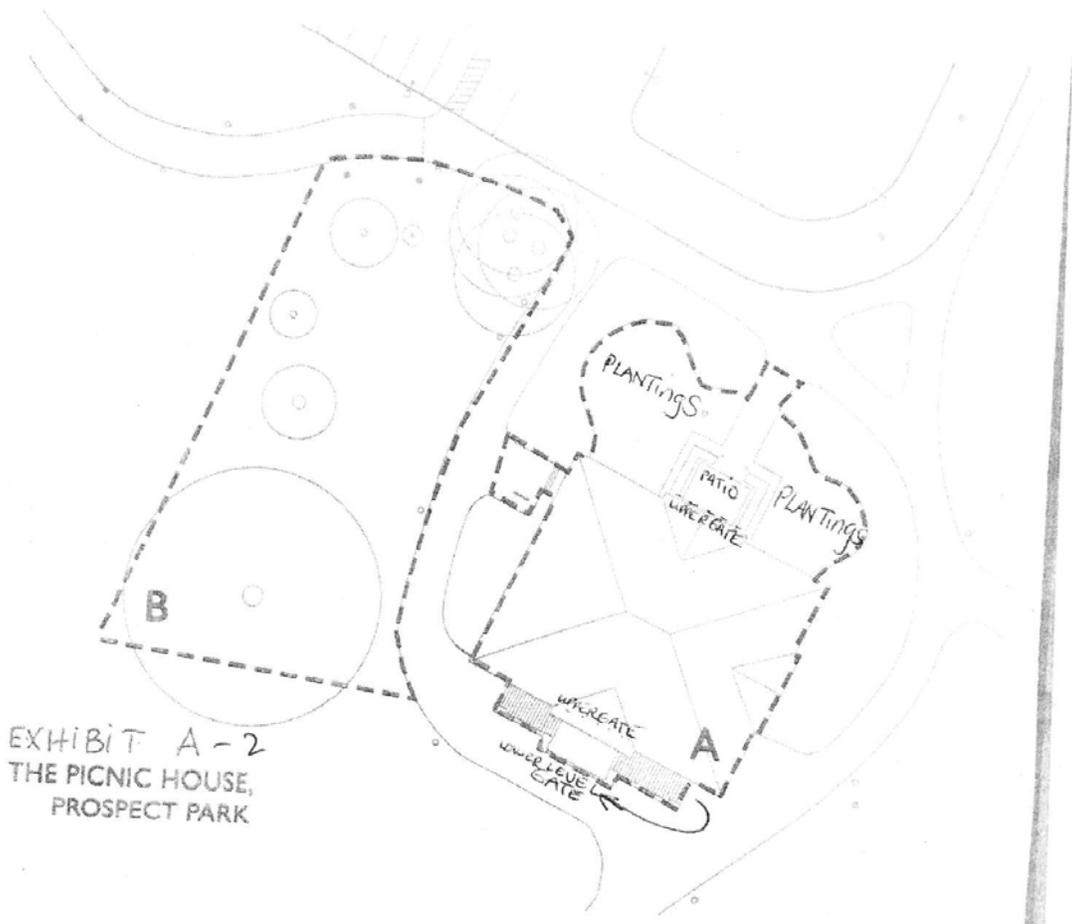


EXHIBIT A-2  
THE PICNIC HOUSE,  
PROSPECT PARK

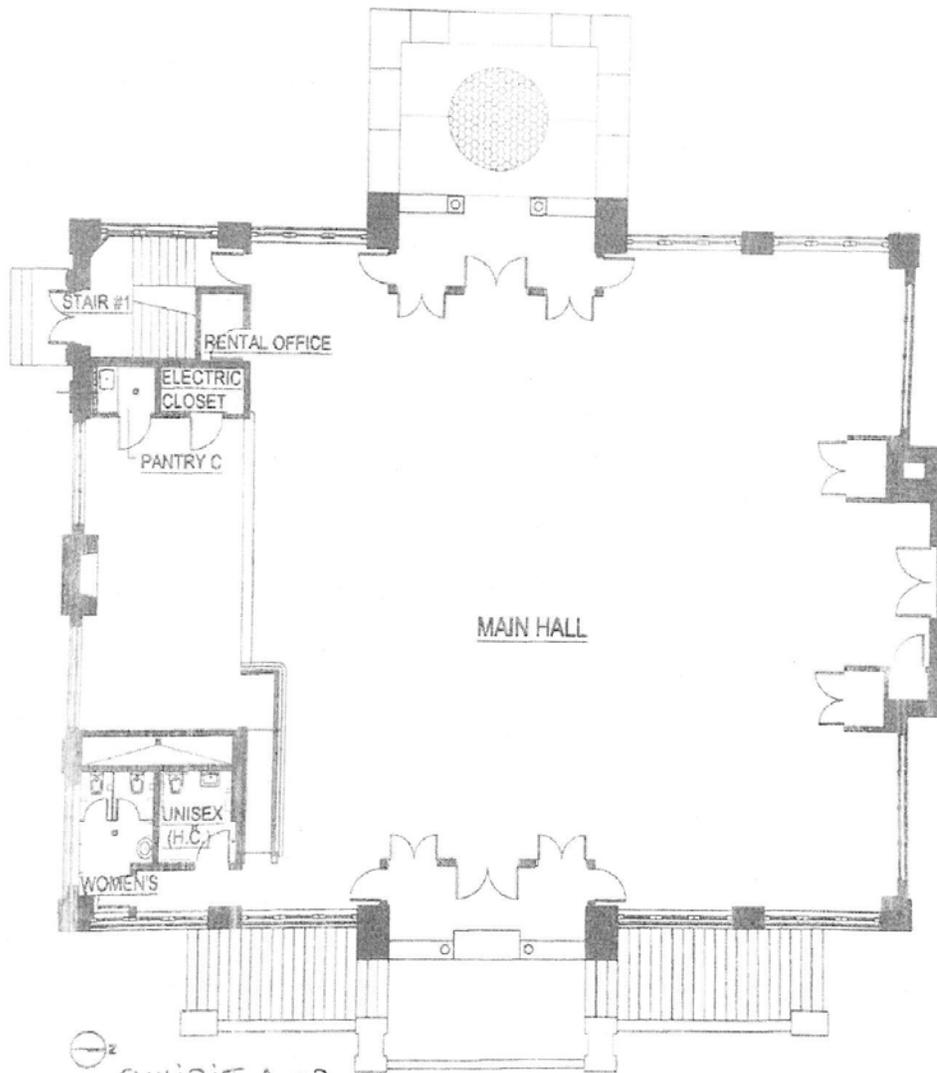


EXHIBIT A-2  
 PICNIC HOUSE MAIN FLOOR  
 SCALE: NTS

**EXHIBIT B**  
**REPORT FORM**

<b>Local Law 28 of 2008</b>							
<b>Partnership Reporting Form</b>							
<b>Reporting Period: July 1 - June 30</b>							
<b>Fiscal Year: XXXX</b>							
<b>Partner</b>	<b>Park Location</b>	<b>Borough</b>	<b>Fiscal Year- end</b>	<b>Total Spending - Maintenance and Operations</b>	<b>Total Spending - Program- ming</b>	<b>Total Spending - Capital</b>	
Prospect Park Alliance	Prospect Park	Brooklyn	30-Jun				

**EXHIBIT C**

**There is no Exhibit C.**

**EXHIBIT D-1**

**MONTHLY REPORT OF GROSS RECEIPTS**

**PROSPECT PARK ALLIANCE  
B73-O**

THIS REPORT REPRESENTS GROSS RECEIPTS RECEIVED  
THROUGH THE LAST DAY OF MONTH

<b>MONTH:</b>	<i>MM/YYYY</i>
<b>RECEIPTS CATEGORY</b>	
- <i>SNACK BAR (PARADE GROUND) OR</i>	
- <i>FEES FROM SUBLICENSING SNACK BAR (PARADE GROUND)</i>	
- <i>MOBILE FOOD UNITS OR</i>	
- <i>FEES FROM SUBLICENSING MOBILE FOOD UNITS</i>	
- <i>CATERING (PICNIC HOUSE) OR</i>	
- <i>FEES FROM CATERING (PICNIC HOUSE)</i>	
- <i>CATERING (BOAT HOUSE) OR</i>	
- <i>FEES FROM CATERING (BOAT HOUSE)</i>	
- <i>SHORT-TERM FACILITY AGREEMENTS (PICNIC HOUSE)</i>	
- <i>SHORT-TERM FACILITY AGREEMENTS (BOAT HOUSE)</i>	
- <i>FOOD TRUCK RALLY</i>	
- <i>FEES FROM THIRD PARTY EVENTS</i>	

- OTHER (SPECIFY)	
<b>TOTAL GROSS RECEIPTS:</b>	<b>\$0</b>

**Sales Tax Collected Amount: \$**

***I hereby certify the above statement to be true and correct.***

Certified correct:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**EXHIBIT D-2**

**SUBLICENSEE**

**MONTHLY REPORT OF GROSS REVENUES**

**PARADE GROUND SNACK BAR**

THIS REPORT REPRESENTS GROSS REVENUES RECEIVED  
THROUGH THE LAST DAY OF MONTH

<b>MONTH</b>	<b>MM/YYYY</b>
<b>REVENUE CATEGORY</b>	
- FOOD	\$
- BEVERAGES	
- CATERING	
- MISCELLANEOUS (DESCRIBE)	
<b>TOTAL GROSS REVENUES:</b>	<b>\$</b>
TOTAL AMOUNT OF GRATUITIES EXCLUDED FROM GR	<b>\$</b>

*I hereby certify the above statement to be true and correct.*

Certified correct:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

---

Title

**EXHIBIT E-1**  
**Citywide Beverage Vending Machines Standards**

For Vending Locations Regularly Used by Adults

All of the following criteria must be met:

**A) Specifications regarding the product mix:**

- 1) No more than two columns (or "buttons") may be unlimited calorie beverages (the maximum of two columns applies irrespective of the total number of columns in the machine).
- 2) Unless otherwise approved by the City in writing, water is required to be stocked for a minimum of 2 columns (or "buttons"). Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.
- 3) The remaining products must be  $\leq 25$  calories per 8 oz.

**B) Specifications regarding product display placement:**

- 1) Water must be placed in the position with the highest selling potential.
- 2) "High Calorie" beverages (defined as any beverage  $> 25$  calories per 8 oz) must be placed in the position with the lowest selling potential.
- 3) For machines where the buttons are arrayed vertically, highest selling potential means those closest to eye level, usually the top buttons, and lowest selling potential means those furthest from eye level, usually the bottom buttons. Or as determined by industry best practices.
- 4) However, because machines have different display arrangements, the City will have sole discretion to approve all product display and placement.

**C) Specifications regarding size:**

- 1) All beverage selections with the exception of water and seltzer are limited to 12 oz. For the purposes of these Standards, seltzer is defined as water naturally or artificially impregnated with mineral salts or gasses, having 0 calories per 8 oz. and no artificial sweeteners.
- 2) All water and seltzer selections must be at least 12 oz.
- 3) Portion sizes smaller than 12 oz are encouraged for High Calorie beverages.

**D) Calorie labeling:**

- 1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information. (adapted from HC §81.50)

**E) Promotional space:**

- 1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices ( $\leq 25$  calories per 8oz) and/or healthy activities.

**F) Price:**

- 1) Pricing models that encourage healthy choices (e.g. by establishing lower prices for healthy beverage choices ( $\leq 25$  calories per 8 oz) relative to "High Calorie" beverages ( $> 25$  calories per 8 oz)) are encouraged.

**For Vending Locations Regularly Used by Children age 18 and under**

**A) Specifications regarding the product mix:**

- 1) Beverage vending machines can only include:
  - Water  
Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.
  - Unsweetened milk, 1% or nonfat only
  - Beverages with  $\leq 25$  calories per 8 oz
  - Carbonation and caffeine are allowed
- 2) Prohibited:
  - Artificial sweeteners
  - Other "natural" non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol)
  - Artificial flavors and colors
- 3) If the location is regularly used by **programs serving children age 12 or younger** (e.g. afterschool locations, summer camp), in addition to the standards above, products:
  - Should not be caffeinated
  - Should be  $\leq 10$  calories per 8 oz

**B) Calorie labeling:**

- 1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information.

(adapted from HC §81.50)

**C) Promotional space:**

- 1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices ( $\leq 25$  calories per 8 oz) and/or healthy activities.

Note that New York City beverage vending standards may be revised or updated in the future. Vendors would have time to come into compliance with any changes.

## EXHIBIT E-2

### **New York City Food Standards Part III: Standards for Food Vending Machines**

The Standards for Food Vending Machines were enacted December of 2011, pursuant to Executive Order 122. These Standards apply to all types of food vending machines including non-refrigerated "snack" and refrigerated machines. Follow these standards to make vending machine choices healthier for employees and visitors.

#### **Snack Standards**

Snacking in excess can lead to weight gain. Snacks, when consumed, should add healthy nutrients to the overall diet and help curb hunger.

- 1) Require that snacks meet all of the following criteria, per package:
  - Calories: no more than 200 calories
  - Total fat: no more than 7 grams
    - Nuts, seeds, nut butters and cheese are exempt
    - Combination products of dried fruit and nuts are exempt
  - Saturated fat: no more than 2 grams
    - Nuts, seeds, nut butters and cheese are exempt
  - Trans fat: 0 grams trans fat
  - Sodium: no more than 200 mg
    - Cottage cheese: no more than 400 mg
  - Sugar: no more than 10 grams
    - Fruit and vegetable products with no added sugar are exempt
    - Yogurt: no more than 30 grams sugar per 8 ounces
  - Contain at least 2 grams of fiber, if product is grain/potato-based (e.g. granola bars, crackers, pretzels, cookies, chips)
- 2) Limit grain/potato-based snacks (includes similar products, such as corn, plantain and taro chips) to no more than 50% of food items in machine.
- 3) Require that calorie information is posted for each food item, as packaged.

## EXHIBIT F

### **PAID SICK LEAVE LAW** **CONCESSION AGREEMENT RIDER**

#### Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>1</sup> Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

The Concessionaire agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. The Concessionaire further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

The Concessionaire must notify the Concession Manager in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, the Concessionaire must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of the Concessionaire.

The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

#### Applicability, Accrual, and Use

---

<sup>1</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSSL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSSL may use sick time for any of the following:

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such

employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

### Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

### Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

### Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

### Records

An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

### Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

### More Generous Policies and Other Legal Requirements

Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**EXHIBIT G**  
**CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.



## EXHIBIT H

### Background Checks Rider

1. Recruitment; Screening; Fingerprinting: The Licensee shall be responsible for the recruitment and screening of employees and volunteers performing work under the License Agreement, including the verification of credentials, references, and suitability for working with clients and participants. Where consistent with State and federal law, if directed by the Parks Department, the Licensee will undertake the fingerprinting of employees and volunteers, including applicants, in accordance with instructions from the Parks Department.

2. Convictions: The Licensee shall comply with Section 296(15) of the New York State Executive Law and Subdivision 10 of Section 8-107 of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer, employment agency or an agent thereof to deny employment to any applicant and, under Section 8-107, to take adverse action against any employee, based on (a) the person's or employee's having been convicted of one or more criminal offenses, or (b) a finding of a lack of "good moral character" where such finding is based on the applicant or employee having been convicted of one or more criminal offenses, when the denial or adverse action violates Article 23-A of the New York State Correction Law.

3. Non-Pending Arrests or Accusations: The Licensee shall comply with Section 296(16) of the New York State Executive Law and Subdivision 11 of Section 8-107 of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer to deny employment to any applicant or take adverse action against any employee when the denial or adverse action violates Section 296(16)—which generally concerns arrests or criminal accusations that are not then pending and which were followed by a termination in favor of the applicant or employee, a youthful offender adjudication, or by a conviction that has been sealed—unless the denial or adverse action is specifically required or permitted by statute.

4. Declare, Print, or Circulate: The Licensee shall comply with Subdivision 11-a of Section 8-107 of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer, employment agency or agent thereof to declare, print, or circulate, or cause the declaration, printing or circulation of any solicitation, advertisement, or publication that directly or indirectly expresses any limitation or specification in employment based on a person's arrest or criminal conviction.

5. Inquiries:

(i) Applying for Employment: The Licensee shall comply with Subdivision 11-a of Section 8-107 of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer, employment agency or agent thereof to make any inquiry or statement (as those terms are defined in Section 8-107(11-a)) related to the pending arrest or criminal conviction record of any person who is in the process of applying for

employment with the employer or its agent until after the employer or its agent has extended a conditional offer of employment to the applicant.

(ii) Conditional Offer of Employment: Pursuant to Subdivision 11-a(b) of Section 8-107 of the Administrative Code of the City of New York, the Licensee may inquire about the applicant's arrest or conviction record after extending a conditional offer of employment, provided that, prior to taking any adverse employment action based on the inquiry, the employer, employment agency, or agent thereof (a) provides a written copy of the inquiry to the applicant in a manner determined by the New York City Commission on Human Rights; (b) performs an analysis of the applicant pursuant to Article 23-A of the Correction Law and provides a written copy of the analysis to the applicant in a manner determined by the Commission on Human Rights, which shall include but not be limited to supporting documents that formed the basis for an adverse action based on the analysis and the employer's or employment agency's reasons for taking such adverse action against the applicant; and (c) allows the applicant a reasonable time to respond of at least three (3) business days, during which time the position shall be held open for the applicant. Pursuant to Section 8-107(11-a), nothing in that provision prevents an employer, employment agency, or agent thereof from denying employment to any applicant or from taking adverse action against any employee for reasons other than the applicant's or employee's arrest or criminal conviction record.

(iii) Non-Pending Arrests or Accusations: The Licensee shall comply with New York State Executive Law § 296(16) and Section 8-107(11) of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer to make any inquiry in writing or otherwise regarding any arrest or criminal accusation of an applicant or employee when the inquiry violates Section 296(16), unless the inquiry is specifically required or permitted by statute.

(iv) Response to Inquiries: Pursuant to New York State Executive Law § 296(16) and Subdivision 11-a(d) of Section 8-107 of the Administrative Code of the City of New York, an applicant's refusal to respond to inquiries or statements prohibited under this Section shall not disqualify the applicant from the prospective employment.

6. Background Checks Required by Law; Licensure: Pursuant to New York State Executive Law § 296(16) and Subdivision 11-a(e) of Section 8-107 of the Administrative Code of the City of New York, Licensees are permitted to perform background checks pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history. In addition, if the Licensee is hiring for positions where certain convictions or violations are a bar to employment in that position under Law, the Licensee may ask questions about those convictions or violations.

Notwithstanding any other provision of this Section, if the Licensee is hiring for positions requiring licensure, including positions such as interns and apprentices for such licensed positions (e.g. prospective attorneys), the Licensee may ask applicants the same questions asked by the licensing body, in accordance with New York State Law.

7. Review of Decision: Where practicable, the Licensee shall provide for the review by a supervisor of a decision not to hire based on prior criminal convictions.

8. The Licensee may consult with the Parks Department regarding the application of this Section.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. 2)

**BE IT RESOLVED** that the Franchise and Concession Review Committee (“FCRC”) hereby authorizes the New York City Department of Transportation (“DOT”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (“Agreement”) with the 34<sup>th</sup> Street Partnership, Inc. (“the Partnership”), to provide for the operation, management and maintenance of a pedestrian plaza located at 33<sup>rd</sup> Street, between 7<sup>th</sup> and 8<sup>th</sup> Avenues, in the borough of Manhattan, (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Partnership, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Partnership in the basic form of Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award.

**BE IT FURTHER RESOLVED** that DOT shall submit the Agreement it proposes to enter into with the Partnership to the FCRC for approval.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

**February 8, 2017**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: Director of the Mayor's Office of Contract Services

**CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET**  
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

<b>AGENCY:</b> New York City Department of Transportation ("DOT")	<b>CONCESSION TITLE/DESCRIPTION:</b> Concession to operate, manage and maintain pedestrian plaza located at 33 <sup>rd</sup> Street between 7 <sup>th</sup> and 8 <sup>th</sup> Avenues, in the borough of Manhattan
<b># VOTES required for proposed action =</b> 4 <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> 2016Con9

**SELECTION PROCEDURE**  
 (\* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)
  Competitive Sealed Proposals (CSP)\*

Different Procedure \* ( Sole Source Agreement  Other \_\_\_\_\_)

Negotiated Concession\*

Recommended Concessionaire: 34<sup>th</sup> Street Partnership, Inc.  EIN  SSN # 13-3629973  
 Attach Memo(s) \*

<b>CONCESSION AGREEMENT TERM</b> Initial Term: <u>To be negotiated</u> Renewal Option(s) Term: <u>To be negotiated</u> Total Potential Term: <u>To be negotiated</u>	<b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b> (Check all that apply) ( <input type="checkbox"/> Additional description attached)
<b>LOCATION OF CONCESSION SITE(S)*</b> <input type="checkbox"/> N/A Address: <u>33<sup>rd</sup> Street, between 7<sup>th</sup> and 8<sup>th</sup> Avenues, in the borough of Manhattan (see attached map)</u>  Borough: <u>Manhattan</u> C.B. <u>5</u> Block # <u>N/A</u> Lot # <u>N/A</u> *Attach additional sheet	<input type="checkbox"/> Annual Minimum Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____% <input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$ _____ v. _____% of Gross Receipts <input checked="" type="checkbox"/> Other formula: <u>Maintenance costs</u>

**CONCESSION TYPE (Check all that apply)**

> **Significant Concession:**  
 NO  
 YES Basis:  
 Total potential term =>10 years  Projected annual income/value to City >\$100,000  Major Concession

> **Major Concession:**  
 NO  
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

**NOTIFICATION REQUIREMENTS**

**Subject concession will be awarded by CSB or CSP.**  YES  NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.

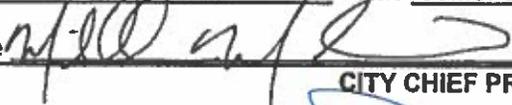
The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to

be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

**AUTHORIZED AGENCY STAFF**

This is to certify that the information presented herein is accurate.

Name Michelle Craven Title Senior Executive Director, Cityscape & Franchises

Signature  Date 12/14/16

**CITY CHIEF PROCUREMENT OFFICER**

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature  Date 12/21/2016  
City Chief Procurement Officer

# CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

**A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS**  N/A

*Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.*

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe):**

The New York City Department of Transportation ("DOT") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules of the City of New York ("different procedures") for the reasons listed in section (B)(2).

**B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS**  N/A

1. *Briefly summarize the terms and conditions of the concession. Add additional sheet(s), if necessary.*

Subject to Franchise and Concession Review Committee ("FCRC") Step 1 authorization, DOT intends to negotiate the Agreement with the 34<sup>th</sup> Street Partnership, Inc. ("the Partnership") for the operation, management and maintenance of a pedestrian plaza located at 33<sup>rd</sup> Street, between 7<sup>th</sup> and 8<sup>th</sup> Avenues, in the borough of Manhattan ("Licensed Plaza").

The Partnership would have the right to provide for the operation and management of the Licensed Plaza in exchange for ongoing maintenance of the Licensed Plaza, including through DOT-approved events, sponsorships and subconcessions including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Partnership, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Partnership in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award.

2. *Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.*

The intent of the Agreement is that all revenue received by the Partnership from the operation and management of the concession will go toward maintaining the Licensed Plaza. Since the concession will not yield a profit to the Partnership, a determination was made not to solicit Competitive Sealed Proposals.

It is in the City's best interest to enter into the Agreement using a different procedure with the Partnership because this organization's mission is to enhance the neighborhood in which the Licensed Plaza is located. The Partnership directly represents the neighborhood that it will serve and has a specific interest in the Licensed Plaza.

- 3a. *Briefly explain the selection procedure that will be utilized.*

On February 8, 2017 DOT intends to seek FCRC authorization to negotiate the Agreement with the Partnership for the operation, management and maintenance of the Licensed Plaza ("Step 1").

Pending FCRC Step 1 approval, DOT intends to negotiate the terms of the Agreement with the Partnership.

Once negotiated and if determined by DOT to be a significant concession, DOT and the FCRC will hold a joint Public Hearing on the proposed Agreement before presenting the proposed concession to the FCRC for "Step 2" approval at a second Meeting. If DOT determines the concession to be non-significant, DOT will present the fully negotiated Agreement with the Partnership to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial public hearing).

3b. ***If the selection procedure is a negotiated concession, check the applicable box:***  **N/A**

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances.  **N/A**



November 9, 2016

The Honorable Gale Brewer  
Manhattan Borough President  
1 Centre Street, 19th Floor  
New York, NY 10007

Mr. Wally Rubin, District Manager  
Community Board 5  
450 7<sup>th</sup> Avenue  
New York, NY 10123

Re: Pedestrian Plaza Concession

Dear Ms. Brewer and Mr. Rubin:

Pursuant to Section 1-16 of the Concession Rules of the City of New York, the New York City Department of Transportation ("DOT") intends to seek approval from the Franchise and Concession Review Committee ("FCRC") to utilize a different procedure to negotiate a Sole Source Concession Agreement ("Agreement") with an organization (the "Concessionaire") for the operation, management and maintenance of a pedestrian plaza on 33<sup>rd</sup> Street between 7<sup>th</sup> and 8<sup>th</sup> Avenues, in the borough of Manhattan, including through DOT-approved events, sponsorships and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Partnership, and other similar merchandise within the Licensed Plaza. DOT has identified the 34<sup>th</sup> Street Partnership, Inc. as a potential Concessionaire, but DOT will consider additional expressions of interest from other qualified and experienced organizations. As such, a public notice is being placed in the City Record to inform other qualified organizations of this opportunity.

If you have any questions, please feel free to contact me at 212-839-6210.

Sincerely,

A handwritten signature in blue ink that reads "Luis Sanchez".

Luis Sanchez  
Acting Manhattan Borough Commissioner

**PUBLIC NOTICE OF A CONCESSION OPPORTUNITY FOR THE OPERATION, MANAGEMENT AND MAINTENANCE OF PEDESTRIAN PLAZA LOCATED AT 33<sup>RD</sup> STREET BETWEEN 7<sup>TH</sup> AND 8<sup>TH</sup> AVENUES, IN THE BOROUGH OF MANHATTAN**

Pursuant to the Concession Rules of the City of New York, the Department of Transportation (“DOT”) intends to enter into a concession for the operation, management, and maintenance of a pedestrian plaza located at 33<sup>rd</sup> Street between 7<sup>th</sup> and 8<sup>th</sup> Avenues in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that helps brand or promote the neighborhood or the concessionaire, and other similar merchandise within the Licensed Plaza.

Subconcessions would be awarded based on solicitations issued by the concessionaire in the basic form of Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award.

DOT has identified the 34<sup>th</sup> Street Partnership, Inc. as a potential concessionaire, but DOT will consider additional expressions of interest from other qualified and experienced organizations for the operation, management, and maintenance of the Licensed Plaza. In order to qualify, interested organizations should be active in the neighborhood of the Licensed Plaza and have demonstrated experience in the management, operation and maintenance of publicly accessible facilities, including but not limited to programming/events management and concession or retail operation/management.

Organizations may express interest in the proposed concession by contacting Emily Weidenhof, DOT Director for Public Spaces, by email at [plazas@dot.nyc.gov](mailto:plazas@dot.nyc.gov) or in writing at 55 Water Street, 6<sup>th</sup> Floor, New York, NY 10041 by February 6, 2017. Ms. Weidenhof may also be contacted with any questions relating to the proposed concession by email or by telephone at (212) 839-4325.

Please note that the New York City Comptroller is charged with the audit of concession agreements in New York City. Any person or entity that believes that there has been unfairness, favoritism or impropriety in the concession process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, telephone number (212) 669-2323.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 3)**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the Department of Citywide Administrative Services, Asset Management (DCAS/AM) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source occupancy permit (Permit) with Emmons Avenue Marina, LLC to utilize City-owned waterfront property, also known as Block 8844, Lot 50, Borough of Brooklyn, for dry boat storage, docking of no more than 8 jet skis, and business accessory parking. The property is approximately 52,940 square feet of uplands and 1,135 square feet of lands under water. DCAS/AM anticipates that the Permit will provide for a term of one-year, commencing on approximately April 15, 2015, with two (2) one-year renewal options, exercisable at the City's sole discretion.

**BE IT FURTHER RESOLVED**, that DCAS/AM shall submit the Permit it proposes to enter into with Emmons Avenue Marina, LLC to the Franchise and Concession Review Committee for approval.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

February 8, 2017

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: Director of the Mayor's Office of Contract Services

**CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET**  
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

<b>AGENCY:</b> New York City Department of Citywide Administrative Services, Asset Management (DCAS/AM)	<b>CONCESSION TITLE/DESCRIPTION:</b> Sole Source Occupancy Permit with Emmons Avenue Marina, LLC for dry boat storage, docking of no more than 8 jet skis, and business accessory parking
<b># VOTES required for                  proposed action =</b> <u>4</u> <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> <u>TBD</u>

**SELECTION PROCEDURE**  
 (\* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)  Competitive Sealed Proposals (CSP)\*  
 Different Procedure \*  Sole Source Agreement  Other \_\_\_\_\_  
 Negotiated Concession\*

Recommended Concessionaire: Emmons Avenue Marina, LLC  EIN  SSN #26-3845790  
 Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> Initial Term: To be negotiated Renewal Option(s) Term: To be negotiated Total Potential Term: To be negotiated	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b>                  (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <input type="checkbox"/> Annual Minimum Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____ % <input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$ _____ v. _____ % of Gross Receipts <input checked="" type="checkbox"/> Other formula To be negotiated
<p><b>LOCATION OF CONCESSION SITE(S)*</b> <input type="checkbox"/> N/A                  Address Approximately 52,940 square feet of uplands and                  1,135 square feet of lands under water</p> <p>Borough Brooklyn C.B. 15                  Block # 8844 Lot # 50                  *Attach additional sheet</p>	

**CONCESSION TYPE (Check all that apply)**

> **Significant Concession:**  
 NO  
 YES Basis:  
 Total potential term =>10 years  Projected annual income/value to City >\$100,000  Major Concession

> **Major Concession:**  
 NO  
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

**NOTIFICATION REQUIREMENTS**

**Subject concession will be awarded by CSB or CSP.**  YES  NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.  
 The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.  
 The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.  
 The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.  
 The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.  
 The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to

be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

**AUTHORIZED AGENCY STAFF**

This is to certify that the information presented herein is accurate.

Name DAVID MORRIS Title DEPUTY CHIEF ASSET MANAGEMENT OFFICER

Signature David Morris Date 1/18/17

**CITY CHIEF PROCUREMENT OFFICER**

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature \_\_\_\_\_  
City Chief Procurement Officer

Date 1/25/17

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

## A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

*Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.*

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe)

The New York City Department of Citywide Administrative Services, Asset Management (DCAS/AM) will be pursuing a Sole Source Occupancy Permit (Occupancy Permit) pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedure) for the reasons listed in Section (B)(2) below.

## B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

### 1. Briefly summarize the terms and conditions of the concession. *Add additional sheet(s), if necessary.*

To be determined at a later date – when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate a Sole Source Occupancy Permit (Occupancy Permit) with Emmons Avenue Marina, LLC. DCAS/AM anticipates that the Occupancy Permit will provide for a term of one-year, commencing on April 15, 2015, with two (2) one-year renewal options, exercisable at the City's sole discretion.

### 2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals. *[Explain]*

Marina Holding entered into an Occupancy Permit with DCAS for City Block 8844, Lots 50 and 375 in the Borough of Brooklyn ,NY. The permit commenced on January 1, 2003 and terminated on December 31, 2003, with two (2) renewal terms ending on December 31, 2005. Marina owned the adjacent lot 10 and operated a marina. Upon the expiration of the permit, the parties could not agree upon the terms of a new permit. The premises were included in a lease auction, but there were no bidders. There was a dispute concerning the boundary lines of City Lot 50, the matter was referred to the Law Department for resolution.

On December 15, 2008, Marina transferred title of its Lot 10 to Emmons Avenue Marina, LLC. and Emmons began to occupy City Lot 50. The Law Department has negotiated a settlement with Emmons for the retroactive use and occupancy. Pursuant to the settlement agreement: (1)Emmons has made the City whole for use and occupancy of City Lot 50 for the period from December 15, 2008 through April 15, 2015,(2) Emmons agreed to enter into an Occupancy Permit for City Lot 50, subject to the approval of the FCRC, which Permit term will commence April 15, 2015, (3) If FCRC approves the issuance of an Occupancy Permit to Emmons, Emmons will pay the City permit fees retroactive to April 15, 2015. The Office of the Comptroller has approved the terms of the proposed settlement. DCAS/AM has determined that the only entity that can utilize City Lot 50 is the owner of the adjacent Lot 10, as demonstrated by the absence of any bidders when the premises were included in a lease auction.

Based upon the foregoing, DCAS/AM believes it is in the best interest of the City to award the concession through a different procedure and not a competitive solicitation process.

### 3a. Briefly explain the selection procedure that will be utilized. *[Explain]*

DCAS/AM is requesting FCRC authorization to use different procedures, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate an Occupancy Permit with Emmons, which will go before the FCRC on February 8, 2017 (Step 1). DCAS/AM has determined this to be significant concession, since it is anticipated that the annual fee will be over \$100,000. Therefore, DCAS/AM and FCRC will hold a joint public hearing on the proposed Occupancy Permit before presenting the proposed Occupancy Permit to the FCRC for "Step 2" approval at a second public meeting.

3b. If the selection procedure is a negotiated concession, check the applicable box:  N/A

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. *[Explain]*  N/A



**Lisette Camilo**  
Commissioner

December 27, 2016

**Ricardo E. Morales**  
Deputy Commissioner  
Asset Management

Theresa Scavo, Chair  
Brooklyn Community Board No.15  
Kingsborough Community College  
2001 Oriental Boulevard, C Cluster, Room C124  
Brooklyn, NY 11235

**The David N. Dinkins**  
**Municipal Building**  
1 Centre Street  
New York, NY 10007

212 386 6368 tel  
[nyc.gov/dcas](http://nyc.gov/dcas)

RE: Request for FCRC Approval to Negotiate  
a Sole Source Occupancy Permit with  
Emmons Avenue Marina, LLC for  
Property Identified as Block 8844, Lot 50  
Borough of Brooklyn

Dear Chairwoman Scavo:

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this letter is to notify Brooklyn Community Board No.15 that the Department of Citywide Administrative Services, Asset Management (DCAS/AM) is seeking Franchise and Concession Review Committee approval to negotiate a sole source occupancy permit with Emmons Avenue Marina, LLC to utilize approximately 52,940 square feet of uplands and 1,135 square feet of lands under water, a/k/a Block 8844, Lot 50, Brooklyn, New York, for dry boat storage, docking of no more than 8 jet skis, and business accessory parking.

This concession has been determined not be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

Any questions and/or correspondence concerning this proposed concession should be directed to Lourdes Figueroa at (212) 386-0484, or via email at [lfigueroa@dcas.nyc.gov](mailto:lfigueroa@dcas.nyc.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Nester", written over a blue horizontal line.

Christopher P. Nesterczuk  
Executive Director/ Leasing  
[cnesterczuk@dcas.nyc.gov](mailto:cnesterczuk@dcas.nyc.gov)  
Tel: 212-386-0363

C: David R. Morris  
Joseph Valentino  
Arlette Faele  
Harry Doobay  
Lourdes Figueroa



**Lisette Camilo**  
Commissioner

December 27, 2016

**Ricardo E. Morales**  
Deputy Commissioner  
Asset Management

Honorable Eric L. Adams  
Borough President  
Borough Hall  
209 Joralemon Street  
Brooklyn, NY 11201

**The David N. Dinkins**  
Municipal Building  
1 Centre Street  
New York, NY 10007

212 386 6368 tel  
[nyc.gov/dcas](http://nyc.gov/dcas)

RE: Request for FCRC Approval to  
Negotiate a Sole Source Occupancy  
Permit with Emmons Avenue Marina, LLC  
for Property Identified as Block 8844, Lot 50  
Borough of Brooklyn

Dear Borough President Adams:

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this letter is to notify the Office of the Brooklyn Borough President that the Department of Citywide Administrative Services, Asset Management (DCAS/AM) is seeking Franchise and Concession Review Committee approval to negotiate a sole source occupancy permit with Emmons Avenue Marina, LLC to utilize approximately 52,940 square feet of uplands and 1,135 square feet of lands under water, a/k/a Block 8844, Lot 50, Brooklyn, New York, for dry boat storage, docking of no more than 8 jet skis, and business accessory parking.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

Any questions and/or correspondence concerning this proposed concession should be directed to Lourdes Figueroa at (212) 386-0484, or via email at [lfigueroa@dcas.nyc.gov](mailto:lfigueroa@dcas.nyc.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Nesterzuk", written over a circular stamp.

Christopher P. Nesterzuk  
Executive Director/Leasing  
[cnesterczuk@dcas.nyc.gov](mailto:cnesterczuk@dcas.nyc.gov)  
Tel: 212-386-0363

C: David R. Morris  
Joseph Valentino  
Arlette Faele  
Harry Doobay  
Lourdes Figueroa